Nos. ~~922~~ - ~~925~~

No. 91 - 94

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

INTERSTATE COMMERCE COMMISSION, *Appellant*,

v.

BOSTON AND MAINE RAILROAD, ET AL., *Appellees*.

MARYLAND PORT AUTHORITY, BALTIMORE ASSOCIATION OF COMMERCE, DELAWARE RIVER PORT AUTHORITY, THE CITY OF PHILADELPHIA, VIRGINIA STATE PORTS AUTHORITY, AND NORFOLK PORT AND INDUSTRIAL AUTHORITY, *Appellants*,

v.

BOSTON AND MAINE RAILROAD, ET AL., *Appellees*.

THE BALTIMORE & OHIO RAILROAD COMPANY, CANTON RAILROAD COMPANY, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, NORFOLK AND WESTERN RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, AND WESTERN MARYLAND RAILWAY COMPANY, *Appellants*,

v.

BOSTON AND MAINE RAILROAD, ET AL., *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

SEPARATE APPENDIX
To All Jurisdictional Statements

ORIGINAL REPORT, REPORT ON RECONSIDERATION, and ORDER OF THE INTERSTATE COMMERCE COMMISSION

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REPORTS AND ORDER OF THE INTERSTATE COMMERCE COMMISSION

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ORIGINAL REPORT	App. 1
REPORT ON RECONSIDERATION	App. 84
ORDER	App. 106

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 6615 [1]
EQUALIZATION OF RATES AT NORTH ATLANTIC PORTS

311 I.C.C. 689

Decided December 5, 1960

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1. Schedules of proposed reduced class and commodity rates on export and import traffic between interior points in differential territory and New York and Albany, N.Y., Boston, Mass., and Portland, Maine, affecting their relation to the present rates on like traffic to and from Baltimore, Md., Philadelphia, Pa., and Norfolk and Newport News, Va., found not shown to be just and reasonable, and to result in undue prejudice and preference as between the ports named.

2. Schedules of proposed reduced rates on like traffic between the same interior points and the ports last named, found not shown to be just and reasonable.

3. Schedules ordered canceled, and fourth-section application denied.

J. H. Colgren, R. E. Costello, J. F. Reilly, R. G. Bleakney, Jr., M. R. Warnock, J. T. Clark, B. Hulkhower, W. Q. Keenan, N. J. Holland, J. W. Grady, G. J. Schwartz, and S. W. Scully for respondents.

S. Goldstein, F. A. Mulhern, E. K. Laux, A. L. Winn, Jr., S. H. Moerman, J. S. Payne, W. J. Myskowski, C. H. Tenney, S. Mandell, S. Brandes, L. J. Lefkowitz, P. Blair, D. F. Tynan, J. B. McDonald, A. C. Welsh, C. W. Merritt, P. C.

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[1] This report embraces also fourth-section application No. 32204, Import and Export Rates from and to North Atlantic Ports.

Brown, J. J. Thornton, J. F. Toppeta, H. E. Foley, G. Waldstein, G. E. Pratt, D. E. Pinsky, J. T. Ryan, R. G. Curry, F. M. Dolan, M. D. Miller, J. H. Macomber, Jr., F. W. Denniston, A. G. Brand, L. B. Hillsinger, C. W. Bucy, E. L. Saunders, L. M. Shinn, J. L. Pease, J. S. Chartrand, and W. B. Grimes in support of respondents.

J. Langdon, Jr., R. R. Bongartz, C. J. Henry, Jr., J. S. Shannon, R. B. Claytor, J. W. Hanifin, H. Biaett, M. A. Meyer, Jr., W. J. Taylor, A. W. Hesse, Jr., R. J. Gunning, J. H. Lewin, W. C. Purnell, and W. P. Quinn for protestant railroads.

D. Macleay, W. Price, Jr., M. Duane, F. W. Sullivan, B. A. Wallace, D. Berger, A. M. Ruben, W. C. Burt, R. M. Beckman, H. L. Walker, P. G. Kraemer, C. R. Seal, H. E. Ketner, C. McD. Gillan, W. L. Marbury, J. M. Jones, Jr., and H. E. Mesirow for other protestants.

W. H. Wagner for an interested shipper.

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Report of the Commission

By the Commission:

Exceptions to the examiner's proposed report were filed by the respondents and port interests of New York and Boston, and the protestants and the several port interests supporting them replied. We have heard the parties in oral argument. Exceptions and requested findings not discussed herein nor reflected in our findings or conclusions have been considered and found not justified.

By schedules filed to become effective on July 10, 1956, and later dates, railroads which serve the ports of New York and Albany, N.Y., Boston, Mass., and Portland, Maine (except as hereinafter indicated), and connecting railroads, herein referred to as the respondents, proposed to reduce the rates[2] on export and import traffic, except iron ore, coal, and coke which is the direct product of coal, between those ports, hereinafter referred to as the north-

[2] Rates and differences in rates are stated per 100 pounds except as otherwise indicated.

ern tier ports, and points in the interior in an area on and north of the Ohio River, generally west of the Buffalo, N.Y.-Pittsburgh, Pa., line, and extending to the Mississippi River. The purpose of the proposal is to equalize the rates, on the Baltimore, Md., basis of rates, on such traffic to and from those ports with the rates on like traffic to and from the ports of Philadelphia, Pa., Baltimore, and the Hampton Roads ports in Virginia, hereinafter called the s 'hern tier ports, and thus abolish the so-called port differentials which have obtained in connection with these rates for many years.

By schedules filed to become effective simultaneously with those of the respondents, certain railroads which serve the southern tier ports, some of which also serve New York, for convenience herein referred to as the protestants, proposed to reduce the rates between the southern tier ports and the same interior territory, except as hereinafter described, by the same amounts, and to reduce their rates to and from New York by the same amounts as proposed by their competitors, the respondents. This counter proposal, in the event that the respondents' proposed rates were found lawful, would restore the present differentials, thus maintaining the longstanding port relationships, but upon a lower level of rates.

Upon protests of certain of each group of railroads, the one opposing and the other favoring equalization of the ports, and the several port interests and other parties supporting their respective positions, the operation of the proposed schedules was suspended until February 9, 1957, and the proponents of the schedules have voluntarily deferred their operation until the disposition of this proceeding. Certain, but not all, connecting railroads which participate in the rates to both the northern and southern tier ports, in order to remain competitive, joined in the respective suspended schedules. 691

By fourth-section application No. 32204, filed concurrently with the proposed schedules and heard in connection with the title proceeding, the respondents seek authority to establish and maintain the proposed rates over their lines

without observing the long-and-short-haul provisions of section 4 of the Interstate Commerce Act.

The territory to and from which equalization of the northern tier ports with Baltimore is initially proposed is roughly that represented by Central Freight Association territory, including Illinois Freight Association territory and southern Wisconsin, hereinafter called the affected or differential territory. It includes territory on and west of a line extending from a point just west of Buffalo through Warren, Oil City, Butler, Pittsburgh, and Washington, Pa., Wheeling, W. Va., thence along the east bank of the Ohio River to Kenova, W. Va., including points in West Virginia, Charleston and west thereof, certain points in Kentucky on the lines of The Chesapeake and Ohio Railway Company, and points on the south bank of the Ohio River from Huntington, W. Va., to Cincinnati, Ohio.

Some of the western railroads serving points in northern Illinois, Mississippi River cities, and Wisconsin did not join in the proposed equalization. Thus, if the respondents' proposal became effective, it would cause an increase in the present rate spreads from such points as Davenport, Iowa, and Madison, Wis., over Chicago, Ill., mentioned later herein.

Equalization is proposed only in connection with import and export rates published as such. Eventually it is intended to effect equalization as to all territory to and from which the recognized port differentials have been maintained and as to all export and import traffic, irrespective of the type of rate on which it moves. The protestants are apprehensive of the widespread collateral effects of the equalization of rates on such traffic, including traffic moving on combination rates; also the rates on coastwise and intercoastal traffic, and the domestic rates to and from the ports. There are numerous unrestricted domestic commodity rates to and from the North Atlantic ports which reflect the port differentials and under which there is a substantial movement of export-import traffic.

Differential rates on export-import traffic between the Hampton Roads ports and the interior apply only from

and to the portion of differential territory which lies west of the line of The Baltimore and Ohio Railroad Company through Sandusky, Mansfield, Newark, Zanesville, and Marietta, Ohio, thence the Ohio River to Kenova, including points on the lines of the Chesapeake & Ohio and The New York Central Railroad Company in the portion of West Virginia which lies in central territory. 69

The recognized differences in the present rail rates on import and export traffic, commonly known as the port differentials, including those at Canadian North Atlantic ports, are shown below:

Port	Differentials, in cents per 100 pounds					
	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6
Import traffic						
Canadian ports (same as Baltimore)						
Portland (Baltimore rates via Canadian routes; New York rates via standard routes)						
Boston (same as New York)						
Albany (Philadelphia rates, subject to domestic rates as maxima)						
Philadelphia under New York	6	6	2	2	2	2
Baltimore under New York	8	8	3	3	3	3
Hampton Roads[1] (same as Baltimore)						
Export traffic						
Canadian ports:						
Halifax, St. John, et cetera (same as New York)						
Montreal (same as Philadelphia)						
Portland						
Boston (same as New York)						
Albany (Philadelphia rates, subject to domestic rates as maxima)						
Philadelphia under New York:						
Grain, 0.5 cent under New York	2	2	2	2	2	2
Flour, 1 cent under New York						
Baltimore under New York:						
Grain, 1.5 cents under New York	3	3	3	3	3	3
Flour, 2 cents under New York						
Hampton Roads[2] (same as Baltimore)						

[1] To territory west of the Sandusky, Mansfield, Zanesville, Marietta line.
[2] From territory west of the Sandusky, Mansfield, Zanesville, Marietta line.

On commodity rates, other than on export grain and flour, the same differentials are generally maintained as on class rates.[3] Thus, it will be observed that, except as to the

[3] The rates on import iron ore from Baltimore and Philadelphia to the Pittsburgh area have been on a parity for over 50 years. See *Iron Ore from Eastern Ports to C.F.A. Points*, 291 I.C.C. 527, 536.

export rates on grain and flour and as to imports moving on first-class or second-class rates, the present recognized differential is 3 cents, Baltimore and Hampton Roads under New York.

In applying the general increases in rates, usually in percentage form, which we have authorized since World War II, the railroads were admonished to restore these differentials. This was done quite promptly on grain and a few other commodities. However, there were extended periods, as much as 3 to 5 years, when, because of extenuating circumstances, rate relationships generally more favorable to the southern tier ports than those reflected by the normal differentials prevailed, thus disturbing the channels of trade. The differentials, normally 3 cents were
693 in numerous instances as much as 5 cents. These disruptions had not been corrected at the time of the traffic study, hereinafter described. Prompt restoration of the differentials was required in *Increased Freight Rates, E., W., and S. Territories, 1956*, 300 I.C.C. 633, 682-684, decided August 6, 1957.

Where class rates apply on this traffic, they are the old docket 15879 rates to and from Baltimore, with those to and from ports north thereof reflecting the above-indicated differentials, except as altered by the disruptions. For example, the class 27.5 import rates to Chicago, including the Ex Parte No. 196 increases, are 96 cents from Boston and New York and 92 cents from Baltimore, as compared with the docket 28300 domestic class rates of 114, 108, and 101 cents, respectively. Under respondents' proposal the 96-cent rate would become 92 cents.

Typical present rates (exclusive of increases authorized in Ex Parte No. 212) are as follows: On imports, in carloads, from New York, 152 cents on bananas to Detroit, Mich.; 169 cents on machinery, n.o.i.b.n., to St. Louis, Mo.; 91 cents on crude rubber to Akron, Ohio; 48 cents on ball or china clay to Erie, Pa.; and 671 cents per gross ton on chrome ore to Marietta, Ohio. On exports, in carloads, to New York, 269 cents on automobiles from Flint, Mich.; 114 cents on glass containers from East St. Louis, Ill.; 34

cents (proportional) on wheat from Chicago; 48 cents on manufactured iron and steel articles from Pittsburgh; 112 cents on packinghouse products from Chicago; and 96 cents on tractors from Peoria, Ill. Except on grain, the corresponding Baltimore rates are 3 cents (60 cents when the rates are published per ton) lower than those shown.

Except for the disruption occasioned by the general increases above mentioned, and which was subsequently corrected, no increase has been made in the differentials which favor the southern tier ports for over 80 years. But the increase in rate level which occurred over those years has proportionately decreased their significance. For example, the sixth-class rates between Chicago and New York-Baltimore were 25 cents and 22 cents from 1877 to 1914. If the increases since authorized, through Ex Parte No. 206, had been applied to those rates they would now be 115 cents and 99 cents, respectively, and would reflect a differential of 16 cents. The increased value of goods has likewise diminished the relative significance of the differential.

When the present differentials were established there were higher ocean rates to and from Baltimore and Philadelphia than to and from the northern tier ports. The differentials were designed, and their effect was, to compensate for the differences in these ocean rates in favor of the northern tier ports. Thus, they tended to produce equal total transportation charges between an interior point and the foreign origin or destination over all routes through 694
the several ports, affording the different railroads and ports competitive rates.

Beginning in the early twenties and extending to about 1935, the ocean rates to and from the different ports were equalized. Consequently, the sum of the rail and ocean transportation charges through the northern tier ports served by the respondents became higher than the sum of those charges through the southern tier ports served by the protestants, by the amounts of the above differentials. The respondents and those supporting them here contend that as a result the northern tier ports cannot effectively compete for the traffic, and their share thereof has become

actually and relatively less while the southern tier ports have increased their share of the total foreign trade through the North Atlantic ports. The evidence relied upon to support these claims is hereinafter discussed.

The respondents' proposal to abolish the differentials, if made effective, would generally provide an equality of aggregate transportation charges, rail and ocean, between foreign countries and points in the affected territory for the whole range of North Atlantic ports, including Albany. As the respondents do not serve Philadelphia, their proposal to equalize the northern tier ports with Baltimore, if found lawful, presumably would require that the Philadelphia rates also be reduced to the Baltimore basis.

In addition to the respondents, those presenting evidence in support of the proposed equalization include the City of New York, the State of New York, the Port of New York Authority, hereinafter called the authority, the Port of Boston Commission, The Greater Boston Chamber of Commerce, The Chamber of Commerce of the State of New York, The Brooklyn Chamber of Commerce, the Albany Port District Commission, the U.S. Department of Agriculture, the General Services Administration, the Board of Trade of the City of Chicago, and numerous trade and traffic associations in the New York and northern New Jersey port area.

The protestant railroads which urge continuation of the differentials are supported by the Maryland Port Authority, the Virginia State Ports Authority, the Delaware River Port Authority, the city of Philadelphia, the Baltimore Association of Commerce, and the Chamber of Commerce of Greater Philadelphia.

The present differentials, except for brief periods of disagreement between the carriers during the eighties, have been in effect since 1877[1] as the result of an agreement

[1] So-called split differentials, one-half the standard differentials, were established on grain in 1899. See *In the Matter of Differential Rates*, 11 I.C.C. 13, 20.

entered into by four North Atlantic port railroads, which had two objectives: To avoid misunderstanding as to the 695
geographical advantages and disadvantages of New York, Philadelphia, and Baltimore as affected by railroad-ocean transportation, and to effect an equalization of rail-ocean transportation cost between interior points and foreign ports reached through those cities. It provided also that rates to and from Boston should be no less than those to and from New York. In 1882, the differentials agreed upon were the subject of an investigation made at the request of the principal terminal railroads serving those ports, conducted by the Thurman-Cooley-Washburn Advisory Commission. It concerned the differentials on domestic as well as foreign traffic. In its report therein, the so-called Cooley award, that commission concluded that the then existing differentials should not be disturbed. The respondents introduced that report in evidence, and direct particular attention to the following paragraph thereof:

> But we do not assume that the rates which are just today will be just indefinitely. They have become established by the force of circumstances and they ought to give way if future circumstances shall be such as to render it right and proper. They constitute a temporary arrangement only: equitable as we think for the present, but which may become inequitable before the lapse of any considerable time. Whenever they shall be found to operate unfairly and to give a force or unnatural direction to trade and whenever it shall appear that they tend to deprive any of the seaports affected by them of the proportion of business that would naturally come to it under the operation of normal competition, the want of equity in the rates will appear and it will be right to modify or perhaps abolish them.

Of the three principles referred to in the report, mentioned variously by the parties as controlling these port relationships; that is, the distance principle, the cost principle, and the "competitive" principle, the last named was found to be the true one and was qualified only to the

extent that it should operate in an atmosphere of controlled rate stability rather than of uninhibited rate cutting and competitive strife, the objective being the preservation and promotion of the prosperity of the several ports, not only from the standpoint of their local interests but in the interest and welfare of the people of the Nation as a whole. This principle of "competitive opportunity," stated by Albert Fink, commissioner of the trunklines, to whom the subject of differential rates had been referred, in his report of December 1, 1881, appears to have been the norm used in testing the soundness of the differentials from their inception.[5] Thus, the advisory commission concluded that the differential rates reflected and were subordinate to that principle, by the operation of which they had come into existence, and that under the circumstances then existing
696 they should not be disturbed. However, it added the paragraph above quoted which the respondents, as already indicated, deem significant in its bearing upon the instant controversy.

A detailed history of the differential adjustment is contained in appendix B to the report in *Maritime Assn., Boston Cham. of Com. v. Ann Arbor R. Co.*, 95 I.C.C. 539, 583. As early as 1905, and in a number of proceedings both prior and subsequent to the equalization of the ocean rates, we considered the lawfulness of that adjustment, when assailed by one or more of the port interests, and consistently upheld it as lawful. See *Lighterage Cases*, 203 I.C.C. 481, 504. This is the first instance in which any port railroads have proposed to alter the adjustment.

In *Albany Port District Comm. v. Ahnapee & W. Ry. Co.*, 219 I.C.C. 151 (1936), in which the port of Albany assailed the domestic rates, then applicable on its foreign traffic, as unreasonable and unduly prejudicial to it and unduly preferential of other North Atlantic ports, our decision, made in the light of the 1935 amendment bringing ports

[5] See Daish, "Atlantic Port Differentials," p. 9. The principle was recognized by the Commission in a proceeding in which the differential rates on grain and flour to New York for export, were assailed. The complaint was dismissed. See footnote 4.

and port districts within the scope of section 3 of the act, prescribed reasonable rates on all port traffic between central territory and Albany on the Philadelphia basis, and required that the undue prejudice to Albany and preference of the other ports therein found be removed by establishing rates which reflected that relationship. In *Export Grain from Buffalo to New York*, 278 I.C.C. 31, 292 I.C.C. 647, we found lawful reduced rates proposed by the railroads, the respondents herein, on ex-lake grain for export from Buffalo to the northern tier ports, and which were on a parity with those of Baltimore. That adjustment is unrelated to the one here in issue. *Maritime Assn., Boston Cham. of Com. v. Ann Arbor R. Co.*, 126 I.C.C. 199, 208-209, 214. In a recent proceeding, import rates on iron ore from Philadelphia and New York to certain destinations in the affected territory the same as those from Baltimore, were found lawful. *Iron Ore from Eastern Ports to C.F.A. Points*, 291 I.C.C. 527, 299 I.C.C. 195 (this proceeding was reopened and is pending). The rates on import iron ore are not in issue herein.

The principal respondents are the New York Central which serves New York, Boston, and Albany; the Erie Railroad Company, The Delaware, Lackawanna and Western Railroad Company, and the Lehigh Valley Railroad Company which serve New York; The New York, New Haven and Hartford Railroad Company which serves New York and Boston; and the Boston and Maine Railroad which serves Boston and Portland. The principal protestants are the Baltimore & Ohio and The Pennsylvania Railroad Company which serve Baltimore, Philadelphia, and New York; the Reading Company which serves Philadelphia; and the 697
Western Maryland Railway Company which serves Baltimore. The protestants serving Hampton Roads are the Pennsylvania, the Chesapeake & Ohio, the Norfolk and Western Railroad Company; and the Virginia Railway Company. Since the hearing the two last-named carriers have merged, as have the Erie and the Lackawanna.

The Maine Central Railroad Company, which also serves Portland, occupies a unique position. It reluctantly joined

in the proposed reduced export rates to that port on the Baltimore basis, to avoid having the highest rates to any United States Atlantic port if the rates proposed by the other respondents were to become effective. Import rates on certain commodities from Portland to the affected territory are on the Baltimore basis and are published by the Canadian railroads, including the Grand Trunk Railway System, whose lines extend from Portland through Canada to the affected territory. The Maine Central participates in those rates, which are on the Baltimore level, differentially lower than the present rates from New York and Boston. It opposes the respondents' proposed import rates, which would eliminate the present differential.

The respondents contrast the present inequality in rail rates to and from the North Atlantic ports with adjustments of export and import rates to and from the South Atlantic and Gulf ports. The South Atlantic ports from Morehead City, N.C., to Jacksonville, Fla., and the Gulf ports are grouped as to import-export rates from and to central territory west of the lines of the Monon Railroad extending from Michigan City to Indianapolis, Ind., and of the New York Central thence to Cincinnati. Such equalization also obtains to and from a large portion of western trunkline territory. Similarly, the Gulf ports from Pensacola, Fla., to Corpus Christi, Tex., are equalized on both export and import traffic from and to portions of Illinois, Iowa, Missouri, and eastern Kansas. Between these South Atlantic and Gulf ports and certain points in the affected territory served by the eastern railroads, including the New York Central, the Pennsylvania, and the Baltimore & Ohio, the rates are generally lower than those to and from New York. Since 1947 these railroads, in order to be in a position to compete with other lines for this traffic, have participated in such rates which are either on the Baltimore basis or lower.

The respondents' position is that, as they are faced with diminishing traffic and the differences in the ocean rates to and from the North Atlantic ports have long since disappeared, the principle of the right to compete, which per-

mitted establishment of the equalized rates to and from the South Atlantic and Gulf ports, to the extent above indicated, should be applied to the North Atlantic ports. 698

Other factors threatening to affect their competitive position, and which motivated the respondents in their decision to equalize the North Atlantic port rates, were (1) the then imminent completion of the St. Lawrence Seaway, recently opened to deep draft vessels, with its potential attraction for grain and other traffic, which they consider makes it all the more imperative that their rail rates be the same as those of the southern tier port lines in their competition for the remaining traffic and the generation of new tonnage to replace that diverted, and (2) the depletion of iron ore reserves in the upper Great Lakes region, adversely affecting the New York Central ex-lake ore traffic to the Youngstown, Ohio, and Pittsburgh areas.

Another consideration urged by the respondents is that the railroads serving the ports of Philadelphia, Baltimore, and Hampton Roads move large tonnages of export and tidewater coal to those ports, which in recent years have increased substantially and promise to continue; and that due to the geographical origin of this coal it is doubtful if much of it would be available to the ports of New York and Boston, but that such traffic affords a backbone of revenue-producing tonnage to the southern tier port roads which is important to their successful operation and prosperity, with the consequence that the conditions are now the reverse of those which induced establishment of the differentials, predicated on the concept of aiding weak or handicapped ports. The respondents argue also that the heavy importation of iron ore provides an important revenue contribution, especially to the Baltimore and Philadelphia roads. Their evidence, however, indicates wide fluctuations from year to year in coal tonnage. In 5 of the years in the postwar decade, the volume handled through Hampton Roads was less than half that in 1955, dropping from 20 million tons in 1947 to 2 million tons in 1950. Proportionately greater fluctuations occur at Baltimore. Its volume of 11.4 millions tons in 1947, the peak year, declined to 0.3 million in 1950.

rose to 4 million in 1951, and dropped to 0.6 million in 1954. Imports of iron ore through Baltimore and Philadelphia in the same decade were more stable, the volume expanding quite consistently. However, the proportion of this volume which is utilized in those port areas and the extent to which the remainder contributes to railroad revenues is not disclosed. The rates on such ore to the affected territory are the subject of other pending proceedings.

The respondents contend that a change in conditions has occurred in the transportation of foreign commerce through the North Atlantic ports since the differentials were established; that following equalization of the ocean rates, completed in 1935, the higher northern tier port rates had the effect of diverting a large share of the traffic to and from the affected territory through the ports south of New York; and that the full effect of this diversion was not immediately felt, but the peacetime shipping following World War II disclosed the impact of that change, as a result of which a preference of the southern tier ports now exists. In this connection they quote from *New York Produce Exc. v. Baltimore & O.R. Co.*, 7 I.C.C. 612 (1898), in which it was found that disturbance of the differentials, which had then been observed for over 20 years, was not justified. However at page 620 appears this statement: "Manifestly, however, the conditions which determine the fairness of a differential are continually varying," and on page 669 it is pointed out that "actual observation of the effect of these preferences is the best if not the only means of determining their fairness * * *." They also cite *Cham. of Com. of State of N.Y. v. N.Y.C. & H.R. Co.*, 24 I.C.C., 55 57, where this Commission said, with reference to the North Atlantic port adjustment: "We are not to be understood as holding that the present rate adjustment will for all time or for any particular period of time be just and reasonable. * * *." The respondents accept the view expressed by the Thurman commission in 1882, reiterated in the report first cited, that the most satisfactory test of these differentials is the result of their operation. As they put it, "the crucial test for Commission consideration is the proven traffic diversion, which continues today."

The position of the authority, in which the State of New York and the city of New York join, is that the overall decline in foreign tonnage through the port of New York in recent years indicates that the proposed reduced rates are necessary to enable the respondents to compete on more nearly equal terms with the railroads serving the southern tier ports, and that, with an equality of ocean rates, there is no competitive necessity for a rail rate differential against New York.

After the respondents had presented their evidence in chief, as provided by special rules of procedure, a petition was filed by the principal protestant railroads requesting that we institute, as part of these proceedings, an investigation into the cost of rail transportation of all export and import traffic to and from the port of New York, particularly with relation to the terminal costs of the respondent railroads at that port. In their reply the respondents urged that their proposal raised only a question of rate relationships between the North Atlantic ports and required no investigation of the level of those rates. The petition was denied on the ground, *inter alia*, that the burden of establishing the lawfulness of the proposed reduced rates to the northern tier ports rested upon the respondents.

The position of the protestants serving Baltimore and 700
Philadelphia is (1) that the respondents have not sustained their burden of showing that the suspended rates between New York, Boston, and Albany and the affected territory would be lawful, nor that those rates from and to New York would be compensatory or competitively justified; and (2) that the southern tier ports would be seriously injured if the present differentials were abolished. They urge also that there is no justification for rates to and from Boston lower than those to and from New York.

The protestants serving the Hampton Roads ports (except the Pennsylvania) contend that no competitive need has been shown for the respondents' proposed reduced rates, and they are not shown to be just, reasonable, consistent with the national transportation policy, or otherwise lawful. Their evidence is directed almost wholly to the

proposal as it relates to New York. That port, they say, is "the real competition faced by Hampton Roads."

With respect to their suspended schedules, which are in the nature of a counter proposal, the protestants are in agreement that this proceeding presents a basic issue of rate relationship between the port of New York and the southern tier ports. Accordingly, they request that this issue be decided on the present rate level so as to avoid needless sacrifice of carrier revenue, which would result in the event all of the schedules should become effective. As it is clear that the sole issue is one of lawful rate relationships, determination of that issue may appropriately be made independently of the counter proposal. In view of our conclusions herein, the evidence presented in support of the counter proposal need not be considered. See *Export Grain from Buffalo to New York*, on further hearing, *supra*, at page 658.

Excluding goods exported to Canada and Mexico, which comprise about 30 percent of all the foreign trade of the United States, the movement of United States manufacturers to foreign markets has been steadily declining. The principal movement of both exports and imports is raw materials, and to a lesser extent, semifinished goods.

Oceanborne commerce is classified into two types of cargo. By far the largest in volume is bulk cargo. It consists generally of low-value, heavy-volume raw materials which are handled at the port by mechanical facilities and provide bottom loading for ships or may move as full cargoes. The other type, called general cargo, includes principally manufactured and semimanufactured goods of relatively high value, which are usually packaged. General cargo generally constitutes the more profitable "top loading" for ships in a balanced cargo operation.

The type of traffic determines the character and to a large extent the cost of the port terminal service which the port railroads perform in delivering traffic to or receiving traffic from the ship, although the facilities employed may vary widely depending upon the physical character-

istics of the harbor used. Another important distinguishing characteristic lies in the relative commercial and economic benefits which a port derives from these different types. General cargo, which requires the performance of various and numerous services; including handling and stevedore service and the supplementary port services hereinafter described, provides greater employment and produces a far greater revenue per ton for the port community through which it moves than bulk cargo does, which is mostly handled by specialized mechanical facilities such as those used in unloading grain and coal. However, both types of cargo are considered essential to a healthy port economy.

North Atlantic port foreign commerce. — The principal exports of the United States are grain, cotton, other raw materials such as coal and phosphate, and semimanufactures. The large volume imports are chiefly crude materials, such as petroleum and ores.

Foreign trade through United States coastal ports in 1955, expressed in net tons consisted of 144 million tons of imports and 96 million tons of exports, a total of 240 million tons, as compared with a total of 83 million tons in 1923 and 124 million tons in 1946. In 1955 the North Atlantic ports' share was 102 million tons or about 71 percent of the imports, and 54 million tons or about 56 percent of the exports, as compared with 61 percent of the imports and 48 percent of the oceanborne exports in 1923. The principal bulk cargo moving through these ports includes petroleum, ores, grain, and coal.

North Atlantic bulk cargoes. — Petroleum imports through the North Atlantic ports rose from 5.5 million tons in 1923 to 65 million tons in 1955. The preponderance of the increase was through the ports of New York and Philadelphia. Most of this traffic consists of crude petroleum which is refined near the ports, and residual fuel oil consumed on or near the seaboard, which seldom, if ever, moves by rail. Little or none of it moves to differential territory.

Importation of iron ore through the North Atlantic ports aggregated 16.8 million tons in 1955. This ore enters for the most part through Baltimore and Philadelphia, with a relatively small volume through Hampton Roads and Boston, and a negligible amount through New York. It moves to some extent in full cargoes in chartered or private vessels. The rates thereon are not here in issue.

Other imports of ores and concentrates, the rates on which are embraced herein, move in much smaller volume than iron ore. They consist chiefly of chrome, copper, luminum, and manganese. Especially since 1946, they have moved in substantial and increasing volume, generally in bulk, but some in drums or barrels. These ores, of which 5.1 million tons were moved through North Atlantic ports in 1955 (1.5 million tons to the affected territory), enter mostly through Baltimore, Philadelphia, and New York, with much smaller but increasing volumes through Hampton Roads.

Coal, also not here concerned, with 34 million tons in 1955, is by far the chief commodity exported through the North Atlantic ports as a group. It moves generally in full cargo lots in tramp or chartered vessels. The great preponderance moves through Hampton Roads, the tonnage handled at that port increasing from 2.7 million tons in 1923 to 29.4 million tons in 1955, while that through Baltimore increased from 1.4 million to 3.7 million tons. During that period the combined volume through New York and Philadelphia was substantial only in 1945 to 1949 and in 1951 and 1952, but even in those years their aggregate volume was less than that at Baltimore. Thus, the increase in coal exports through the North Atlantic ports was most notable at Hampton Roads.

From the standpoint of volume, grain is the second most important commodity exported through these ports, increasing from 4.2 million tons in 1923 to 5.4 million tons in 1955. It is the chief export, and by far the most important bulk commodity, of the tonnage moving to and from the affected territory. From 1923 to 1955 there were large increases in the tonnage to Baltimore and Hampton Roads.

a lesser increase to Albany, and a decrease in the volumes through New York, Philadelphia and Portland. The net result was an increase from 58 to 73 percent of the North Atlantic port total for the southern tier ports, and a drop from 42 to 27 percent of that total for the northern tier ports. Grain requires special port terminal facilities and moves largely in full cargo lots. The 1955 movement was distributed as follows: Baltimore 2.3 million tons, Hampton Roads 1 million, Albany 0.8 million, Philadelphia 0.7 million, New York 0.4 million, with Boston and Portland dividing 0.2 million tons.

General participation of North Atlantic ports in foreign commerce. — A considerable portion of the tonnage data relied upon by the respondents and those supporting them relates to the trends of the several North Atlantic ports' participation in all oceanborne foreign commerce of the United States, as distinguished from that to or from the affected territory. These data show the volume of such commerce through each of those ports since 1923, regardless of the mode of transportation used. It is not limited to rail tonnage nor to the specific interior area with which this case is concerned. Such evidence has little or no significance as an indication of the trends which the ports have experienced with respect to the traffic here concerned.

The total of oceanborne exports and imports combined through New York rose from 22.6 million gross tons in 1923 to 36.2 million tons in 1956, but that port's share of the 703
total United States oceanborne exports and imports declined from 28.6 percent to 14 percent during this period. Its share in 1935 was 26.5 percent, and in 1946 it was 23.7 percent. The greater part of the decline in its relative foreign-trade position occurred in the period following World War II.[6]

For Boston the situation as to all oceanborne traffic is somewhat similar. Its imports increased from 2.4 million

[6] These data and those in appendix D hereto were reported by the Bureau of the Census. Those shown in appendix A are from "Waterborne Commerce of The United States" by the U.S. Army Corps of Engineers.

gross tons in 1946 to 5.5 million tons in 1956, a gain proportionately greater than for New York in the corresponding period. During the same years, its exports increased from 395,000 tons to 952,000 tons, while New York's declined from 12 million to 8.7 million tons. The change in tonnage, in the same period, exclusive of the principal bulk commodities, for Boston and New York and for the southern tier ports, is shown in appendix C. The percentage of total United States foreign tonnage moving through Boston dropped only slightly during that decade, from 2.6 to 2.5 percent. However, while the trend of Boston's total volume of exports and imports has been upward, since 1923 its percentage share has trended downward, declining from 4.7 percent in 1923 to 2.5 per cent in 1956, a drop slightly less proportionately than for New York.

The share of the southern tier ports in total United States imports and exports increased from 1923 to 1956 as follows: Philadelphia from 7.9 to 15.7 percent; Baltimore from 8.4 to 10.4 percent; and Hampton Roads from 4.3 to 17.1 percent. Bulk cargo accounted for most of this increase.

Tonnage data showing the total of exports and imports through New York, as compared with the total for the United States, in the years 1923 and 1946 through 1956, are set forth in appendix D. The extent of New York's participation in exports and imports of general cargo is also shown.

Except for 19.1 million gross tons of tanker cargo imports in 1956, an increase from 2.4 million tons in 1923, the principal foreign trade of New York in 1956 was general cargo. That port compares the increases in its share in this type of cargo, 1956 over 1955, of 0.1 percent in exports and 1.9 percent in imports, with much larger percentage increases, ranging up to 37 percent for exports and 29 percent for imports, at the principal Gulf and South Atlantic ports and the Pacific coast ports as a group.

New York's position in United States foreign trade. — While New York emphasizes the drastic decline in its

percentage of the total United States import and export tonnage, particularly since World War II, its increasingly less favorable position relatively during this period stems largely from its failure to participate in the large increase in the export movement of coal, its generally smaller share of the increasing exports of grain, and its inability to share proportionately in the burgeoning imports of petroleum and ores, especially iron ore. Exclusive of coal and grain, total exports through Baltimore increased from 1,871,867 tons in 1946 to 2,348,734 tons in 1955. Because of declines in such tonnage through Philadelphia and Hampton Roads, the exports through southern tier ports aggregated 5,600,743 and 5,316,338 tons in those respective years. Comparable data for the northern tier ports are 8,893,598 and 8,827,021 tons, respectively, of which about 8.5 million and 8.2 million moved through New York. Nothing in these data suggests that any decline experienced by the northern tier port group or by New York in their percentage participation in such exports was due to an increase in the participation of the southern tier ports. 704

Carload export traffic, other than coal, coke, and grain, unloaded at United States North Atlantic ports increased from 203,432 carloads in 1939 to 303,149 carloads in 1956, an increase of almost 100,000 cars. Of the increase, 57.7 percent was at New York, 7.4 percent at Philadelphia, 17.1 percent at Baltimore, 13.6 percent at Hampton Roads, and 3 percent at Boston.

From 1946 to 1955, as to export coal and grain, New York like all the other North Atlantic ports, except Albany as to grain and Hampton Roads as to coal and grain, suffered a decline in the aggregate exports of these commodities. Through Hampton Roads their movement increased from 4.9 million tons in 1946 to 30.7 million tons in 1955, as compared with an increase from 45.5 million to 65.5 million tons from all of the United States. About 95 percent of the increase in total export volume at Hampton Roads in this period was of coal traffic.

The United States imports of petroleum and ores aggregated 23.7 million tons in 1946 and 119 million tons in 1955, an increase of 95.3 million tons. Of this, about 66 percent or 63 million tons occurred at North Atlantic ports, divided as follows: New York 14 million, Portland 8 million, and Boston 2 million tons, a total of 24 million tons, as compared with an increase of 39 million tons at southern tier ports, divided: Philadelphia 26 million tons, Baltimore 10.5 million tons, and Hampton Roads 2.5 million tons. During this decade New York's imports of these two commodity groups increased 181 percent, as compared with 400 percent for the United States and 247 percent for all North Atlantic ports.

705 Summarizing, the exceptionally heavy export of coal through Hampton Roads and the large increases in imports of petroleum and ores, in absolute volume and percentagewise, through Philadelphia and Baltimore, largely explain the loss of the relative position which New York has experienced in United States oceanborne foreign commerce. As shown in appendix A, if the tonnages of those bulk commodities and also that of export grain are excluded from the total tonnage of imports and exports through the North Atlantic ports, New York increased its percentage of the movement through those ports from 53.7 percent in 1935 to 56.9 percent in 1955.

Also contributing to the decline in New York's relative position as to total United States exports and imports has been the rapid growth since World War II of trade through the South Atlantic Gulf, and Pacific ports, due in large measure to the expanding population and industrial development in the areas tributary to those ports. Their relative importance in the handling of general cargo in 1956, as compared with New York and other North Atlantic ports, is shown in appendix B.

Considering New York's position in the competition for all North Atlantic foreign trade, the following table shows, in the first column, the total of exports and imports for 1955:

Port	Column 1 Total	Column 2 Imports	Column 3 Exports
	Tons	*Tons*	*Tons*
New York	38,897,567	9,442,033	8,612,347
Philadelphia	37,136,849	2,965,677	2,619,374
Baltimore	25,733,775	4,370,151	4,640,435
Hampton Roads	35,888,849	1,713,203	2,031,777

If import petroleum and iron ore, and export coal are eliminated, for the reasons, among others, that they do not move to or from the affected territory or the rates thereon are not in issue in this proceeding, the tonnages are as shown in columns 2 and 3. As those in column 3 include grain and those in column 2 bulk ores other than iron ore, they do not indicate the relative value to the several port communities of the tonnages. The following table shows the tonnages, excluding these commodities and also those previously named. Accordingly, it is representative of the total general cargo which moves through the ports named:

Port	Total	Imports	Exports
	Tons	*Tons*	*Tons*
New York	16,612,501	8,434,065	8,178,436
Philadelphia	4,455,974	2,651,018	1,804,956
Baltimore	3,795,809	1,648,071	2,147,798
Hampton Roads	1,937,100	1,142,812	794,288

These tables show that New York handled more tonnage of all commodities than any of the southern tier ports; excluding petroleum, coal, and iron ore, it handled nearly as much as those ports combined; and it handled about 60 percent more general cargo exports and imports than those ports combined. 706

The foregoing comparative data relate to the foreign traffic flow through the ports regardless of its domestic origin or destination, or the mode of inland transportation when the goods moved to or from an inland point other than the port of entry or port of export. A July 1957 issue of a Port of New York Authority publication states that trucks pick up and deliver over 50 percent of the export and import general cargo at the port of New York's piers.

Reference is made therein to an instance of 35 trailer loads of machinery moved from a single pier in one day. There is no indication that any bulk cargo moved to or from any of the ports by truck. But such cargo moving between the affected territory and New York has available to it inland barge service by the New York State Barge Canal.

Alleged loss of competitive position since 1945. — The respondents claim that the northern tier ports have suffered a loss in relative position with respect to North Atlantic port tonnage beginning in 1946. In analyzing this claim, all export tonnage exclusive of coal and grain, and all import tonnage exclusive of petroleum and iron ores, will be considered. The results, with those for New York stated separately, are shown in appendix C.

In 1955, of the North Atlantic port exports, the share of the four northern tier ports, excluding coal and grain, was 62 percent, the same as it was in 1945, and slightly higher than it was in 1946, the year when the respondents claim their relative position began to deteriorate. The volume of exports through Boston of 435,118 tons in 1955 was the largest for any year shown except 1943, a war year, and was more than double that of 1946. As the table shows, the southern tier ports' exports declined from 1946 to 1955, Baltimore alone showing an increase from 1.9 million tons to 2.3 million tons.

As to imports, excluding petroleum products and iron ore, the northern tier ports are not shown to have suffered a marked loss in relative standing since World War II. Their 1955 volume was 11.2 million tons, as compared with 7.4 million tons in 1946. Those volumes represented 58 percent and 55 percent, respectively, of the total of these imports through the North Atlantic ports. Since 1945 their share of that total has ranged from 53 to 58 percent. Boston's share declined from 8 percent in 1946 to 7 percent in 1955, but its volume of 1.4 million tons in 1955 was about 40 percent greater than in 1946. There was little change in Portland's or Albany's relative position from 1946 to 1955, although their tonnage expanded.

The imports through New York increased from 6.2 million tons in 1946 to 8.4 million in 1948, while those of Baltimore increased from 2.2 million to 3.3 million tons. By 1955 these had risen to 9.4 million and 4.4 million tons, respectively. Baltimore's increase over 1946 was 2.2 million tons, but 1.3 million tons of this represented an increase in the movement of ores, other than iron ore. Of the increase of 3.2 million tons at New York from 1946 to 1955, about 0.6 million was of such other ores. While the volume of these ores rose from 0.4 million to 1 million tons at New York, it rose from 1.4 million to 2.7 million tons at Baltimore and from 0.6 million to 0.7 million tons at Philadelphia. 707

Foreign traffic embraced in this proceeding. — The record contains no complete comparative data from which the trend of the subject traffic, and the effect of ocean-rate equalization upon it, to and from New York and the other northern tier ports, can be determined. Nor were such data presented for the southern tier ports. The only evidence indicative of such a trend relates to the post World War II period for the port of New York only, and is restricted to traffic of the four respondent railroads as shown in the following table. The data in the last column relate to a test period hereinafter described. As most of the tonnage data for Boston are for this period, few comparisons with any earlier period are afforded. The Boston & Maine shows comparable Boston tonnage for 1951. Its export traffic in that year was 1,264 carloads, as compared with 3,253 carloads in 1955-56. All but 46 and 18 of such shipments were of grain. Its import traffic from Boston was 188 and 226 carloads for those years, of which 34 and 28 carloads, respectively, were woodpulp:

	1946	1947	1951	August 1955-July 1956
New York Central:	*Tons*	*Tons*	*Tons*	*Tons*
Import	148,073		229,373	149,002
Export	775,644		502,791	515,403
Delaware, Lackawanna & Western:				
Import		72,912	163,646	91,492
Export		407,808	273,795	151,108
Totals	923,717	480,780	1,169,605	1,107,005
Erie:	*Carloads*		*Carloads*	*Carloads*
Import	3,969		5,916	3,164
Export	18,807		22,816	19,660
Lehigh Valley:				
Import	5,042		5,348	2,939
Export	13,630		14,621	10,555
Totals	41,448		48,701	36,318

[1] Does not include grain; statistics unavailable.

The protestants contend that the data thus shown reveal a creditable performance under the prevailing differentials. They urge that in evaluating them it must be borne in mind that 1946 and 1951 reflect the influence of war activities; nevertheless exports of the New York Central and the Lackawanna in the test year exceeded those of 1951, and their imports in that year exceeded those in 1946 or 1947. They stress that such traffic was obtained despite the development in these postwar years of fierce truck competition, affecting particularly general cargo, and in the face of differentials often greater than the normal ones here in issue. Other than an unusually heavy volume of export grain through the North Atlantic ports in 1951, the years 1946 and 1951 do not seem atypical with respect to the kind of traffic here considered.

In view of the paucity of comparative data relating to the trend in the movement of foreign traffic between the several North Atlantic ports and the affected territory, an attempt was made to demonstrate that New York's failure to participate more fully in this traffic is due to large increases in the volume of foreign tonnage through the southern tier ports, and that these tonnages originated in or were destined to the affected territory.

The authority contends that a close correlation existed, in the period 1929 to 1954, between manufacturing employment in the United States and total foreign trade.

During that period the number of manufacturing employees increased by 67 percent and the tonnage of ocean-borne exports and imports increased 82 percent. As that tonnage includes large quantities of export coal and grain, and of import petroleum, production of which bears little, if any, direct relation to manufacturing, it is clear that the validity of this premise has not been established. The authority undertook to show also that there is a similar correlation between the total foreign tonnage moved through New York and the southern tier ports, and manufacturing employment in the affected territory and in the immediate hinterlands of those ports. The increase in tonnage was 118 percent and in employment 50 percent, during the same period.

Assuming the existence of the stated correlation, the authority reasons that in order to determine which North Atlantic port or ports serve as a gateway for the traffic to and from the affected territory it is necessary simply to compare the tonnage flowing through the ports with the manufacturing employment in their hinterlands. It argues that any increase in volume not generated by such employment in the port's hinterland area necessarily represents traffic to and from the affected territory. It shows data which purports to disclose such a situation with respect to the southern tier ports; that is, an increase in employment in their hinterland from 1.4 million to 1.8 million, contrasted with total export and import tonnage through those ports of 16.5 million and 63 million gross tons in 1929 and 1954, respectively.[1] From these it concludes that there has been an "astonishing increase" through these ports which cannot be ascribed to the relatively small increase in employment in their hinterland, and hence that this increase was caused by traffic to and from the affected territory. 709

An analysis of the tonnage data demonstrates the unsoundness of this conclusion. The data of record show that export-import tonnage through the southern tier ports

[1] The volume shown for 1947 is 60.4 million gross tons.

was 19.1 million net tons in 1928 and 67.3 million tons in each of the years 1947 and 1954. Of these, petroleum, iron ore and concentrates, coal, and grain aggregated 10 million tons in 1928 and 54.4 million tons in 1954. Export coal and grain bear little, if any, relation to manufacturing employment; petroleum imports do not move to the affected territory; and probably very little of the iron ore in 1947 and less than half of that in 1954 moved to that territory. The aggregate tonnage of petroleum, coal, iron ore, and concentrates was 51.7 million tons in 1954, an increase of about 43 million tons over 1928, as compared with an increase in total foreign tonnage of 48.2 million tons, 1954 over 1928. Thus, there is little support for the conclusion that the increase in tonnage through the southern tier ports is attributable to movements of the subject traffic from and to the affected territory.

The traffic studies. — The respondents made a study of the subject traffic, broken down by commodity classes, which moved to and from the northern tier ports over their lines during a 12-month test period ended July 31, 1956. The protestant railroads made a similar study of the traffic which they handled through the southern tier ports and also of that to and from New York over the Pennsylvania and the Baltimore & Ohio. Traffic data of The Central Railroad Company of New Jersey to and from New York were made available to them and were included in their study, although that road did not join in publishing the reduced rates to New York and is not a party to this proceeding. The protestants also compiled tonnage data for comparable port traffic handled over the same lines to and from areas other than the affected territory. All of the data relating to the subject traffic were combined to present a complete picture thereof handled to and from the affected territory in the test year.

While the record lacks comprehensive evidence from which comparative trends of this traffic through the northern tier ports and the southern tier ports can be determined, the data in the combined studies for the test year show, in detail, the volume of the specific commodities, in-

cluding export grain but exclusive of export coal and import petroleum and iron ore, which moved through each of the ports during that period. These data are summarized in appendices E and F by commodity groups and for the two opposing port groups, and show the extent to which each port and the railroads which serve it participated in the traffic in issue at the time this proceeding was instituted. These data are the best evidence which the record affords of the combined relative impact of the present differentials and other circumstances upon the movement of the subject traffic through the several ports. 710

Import tonnage here concerned. — As shown in appendix E, the 2,121,822 tons of imports which moved through the southern tier ports exceeded by far the 676,456 tons through the northern tier ports, but the difference in these volumes is somewhat less than the volume of products of mines, 1,622,761 tons, imported through the southern tier ports. The latter products consisted almost entirely of ores and concentrates, other than iron ore.

The next largest tonnage is in the manufactures and miscellaneous group, the total of 745,022 tons being divided almost equally between the two groups of ports. New York obtained 47.6 and Baltimore 28.2 percent of the total.

The chief agricultural imports were coffee and fresh bananas. Coffee totaled 135,762 tons and moved almost entirely through New York. Of the total of 117,142 tons of bananas, 62,664 tons moved through Baltimore and 53,946 tons through New York. Thus, the only import tonnage which moved in substantial volume as to which the northern tier ports failed to obtain a proportionate share was that of ores and concentrates, exclusive of iron ore.

Boston's imports of 17,739 tons, including 5,088 tons of crude rubber, were somewhat greater and more diversified than those of Portland, but they were insignificant as compared with the volume at New York or any of the southern tier ports. They comprised only about 0.6 percent of the total imports, excluding petroleum products, which moved to the affected territory through the North Atlantic ports,

contrasted with 1.7 million tons moved through the port in 1955 to all destinations, a volume almost 100 times greater. Imports through Portland consisted of relatively small quantities of clay and woodpulp.

Export tonnage here concerned. — As in the case of imports, the preponderance of the 8.2 million tons of exports through all North Atlantic ports, or 63.7 percent, moved through the southern tier ports. The excess of 2,234,171 tons moved through those ports reflects the greater tonnage of agricultural products consisting of 3,993,051 tons, or 82.1 percent of the total of these products (as compared with 868,000 tons or 17.9 percent through the northern tier ports), offset by the difference in the tonnages of manufacturers and miscellaneous. Those tonnages were 1,099,690
711 tons for the southern tier ports and 1,913,481 tons for the northern tier ports, or 36.5 percent and 63.5 percent, respectively, of the total. New York's share was 63.4 percent and that of Baltimore 29.3 percent. The total of about 3 million tons included 950,022 tons of manufactured iron and steel, of which 61 percent moved through New York and 37 percent through Baltimore.

Thus, of the three groups supplying the principal volume of exports, only in the agricultural products group, of which about 88 percent was corn and wheat, were the southern tier ports able to show a greater share of the tonnage than the northern tier ports. The proportions of the agricultural exports through Boston, Albany, and Portland were 7.4 percent, 2.9 percent, and 1.4 percent, respectively, of the North Atlantic total, as compared with 6.2 percent for New York. Except for some grain, very little export traffic moved from the affected territory through Boston, Portland, and Albany. For example, only 68 carloads of such traffic to Boston were handled by the New Haven, as compared with 1,867 carloads from unaffected territory.

Summary of foreign traffic here concerned. — Of a total of about 11 million tons of exports and imports, exclusive of import petroleum and iron ore and export coal, handled

between the North Atlantic ports and the affected territory in the year ended July 31, 1956, about one-third moved through the northern tier ports. The preponderance of the tonnage passed through the southern tier ports, but as to imports the excess consisted almost wholly of ores and concentrates other than iron ore, and as to exports it was represented entirely by grain and grain products. Of the only other group of importance in this case, manufacturers and miscellaneous, almost two-thirds of the exports and over one-half of the imports were handled through the northern tier ports. Thus, the evidence demonstrates the ability of those ports as a group to attract the preponderance of the tonnage, except as to export grain and import ores and concentrates, the movement of which appears to be largely attracted to the southern tier ports because of more adequate facilities or other circumstances relating peculiarly to those commodities, discussed later in this report.

The complete dominance by New York of the North Atlantic general-cargo traffic to and from the affected territory is clear. Of imports, its volume exceeded that of all the other ports combined, was more than double that of Baltimore, and almost four times that of Hampton Roads. As to general-cargo exports, New York's volume was 62.7 percent of the total volume for all of the ports and over 50 percent greater than that of the southern tier ports combined. Also, it was more than double the Baltimore volume and more than 10 times that of Hampton Roads.

Both as to the total exports from affected territory and the total imports handled to that territory, New York's volume was more than double that of Hampton Roads, and about three time that of Philadelphia. Baltimore's tonnage surpass[es] New York only because of its large volume of export grain and of import bulk ores, other than iron ore. 712

Bulk cargo commodities. — The respondents call attention to the increase in total exports of grain since 1945 through Baltimore and Hampton Roads, and the decreasing volume of such traffic through their ports. The number of carloads of all export grain handled at the several

ports in 1945 and 1956, respectively, were as follows: Portland, 8,960 and 1,639; Boston, 6,462 and 10,607; Albany, 2,270 and 13,709; New York, 21,419 and 12,639; Philadelphia, 26,423 and 23,423; Baltimore, 43,339 and 51,817; and Hampton Roads, 2,284 and 19,035.

As in the case of other traffic, the record contains little evidence showing the trend of grain exports to the respective ports from the affected territory. However, as shown in appendix F, this grain tonnage is an important part of the commerce of the southern tier ports. The volume of 2,339,309 tons moved through Baltimore in the test year represented more than 70 percent of all the export tonnage herein considered, and that exported through Philadelphia and Hampton Roads represented over 80 percent of all exports from the affected territory through each of those ports. The corresponding movement of export grain through New York was 204,000 tons, which was less than 10 percent of the tonnage of all commodities originated in the affected territory and exported through that port. Thus, the grain tonnage from the affected territory to Baltimore almost equaled the total export tonnage from that territory to New York.

While, as stated, New York's general-cargo tonnage far exceeds that of Baltimore, the protestant railroads have improved Baltimore's position as a port by attracting bulk commodities, chiefly grain and bulk ores, for which they have provided specialized loading or unloading facilities. As to grain, from 1915 to 1924 they constructed three modern elevators equipped for handling, cleaning, and bagging grain, with a storage capacity of 11.5 million bushels. This was increased to 13 million bushels in 1956. They provided berths for loading simultaneously at least eight ocean vessels directly from the elevators. New York continued to lead Baltimore by a wide margin in the export of grain through 1943. Notable in contributing to its supremacy were numerous parcel lot shipments moving in liners affording direct service to foreign ports, and the availability of grain exporters at the port. Also, ships could load grain from lighters while taking on general cargo on

the pier side, thus effecting important savings. With the heavy Government exportation after World War II, and its need for storage capacity, the Baltimore facilities have attracted expanding volumes, which began to move in- 713
creasingly in full-cargo lots.

Despite its prewar leadership, New York's elevator facilities and storage capacity of 10.75 million bushels in 1905 dwindled to three elevators, one of which, on Gowanus Bay, has no direct rail connection, and another only limited storage capacity. Their combined capacity is now only 4.5 million bushels. The construction of an elevator with a capacity of 13.5 million bushels at Albany in 1932, presently operated by a private interest, also affected the distribution of export grain among the North Atlantic ports through the years. However, significant changes beginning in 1952 reflect the increasing importance of commercial operations, and the Government's activity is of less relative importance. Parcel lot shipments are increasing, and large exporters have leased or constructed elevators at Boston and Norfolk, in addition to the private operation at Albany.

For many years prior to May 1, 1952, the Norfolk & Western operated its Sewall's Point elevator at Norfolk. On that date it leased it to the Continental Grain Company. Private operation enables the merchant to blend and upgrade the grain, including grain purchased from trucks. Receipts at this elevator, which ranged from a few hundreds to 1,749 carloads in the years prior to 1945, and from 2,100 to 4,300 carloads from 1945 to 1951, rose to 22,316 carloads in 1955. The operators of such facilities will no doubt continue to use them intensively, irrespective of the present freight rate adjustment. It is noteworthy that in 1952 the ex-lake rates on grain from Buffalo to the North Atlantic ports were equalized, and that Norfolk's share of that grain increased in that year from almost nothing to 6.9 percent. For the years 1952-56 its share averaged 15.3 percent, and the average for New York was 27.5 percent. Steamship lines at New York have begun to allow shippers a discount of 50 cents per ton from

the ocean rates if the grain is loaded by lighter and floating elevator while the vessel is docked at a general-cargo pier. Beginning in early 1957, the Commodity Credit Corporation has sold grain delivered on track at any North Atlantic port at the same price, thus absorbing any differential in the inland freight rates.

The combination of several of the foregoing circumstances has affected Baltimore's grain traffic. Its share of North Atlantic exports declined from 47.6 percent in 1952 to 36.2 percent in 1956 and 25.4 percent in the first 9 months of 1957. In the same period Norfolk's share increased from 5.6 percent to 19.9 percent, Boston's share from 5.6 percent to 14.5 percent, and New York's share from 6.4 percent to 11.1 percent.

714 Baltimore has also made special efforts to attract low-grade bulk imports such as chrome and manganese ore, which move both in full-cargo lots and in large parcel lots of from 2,000 to 5,000 tons. Three railroads have built special ore-handling piers with high-capacity, efficient unloading facilities, permitting fast discharge of vessels and dispatch of the ore to the consignee. These facilities began operation in 1917, 1930, and 1951, respectively. Their use in 1956 was substantially less than maximum capacity, but with the increasing demand for import ore following the war these installations have proved attractive.

Almost all of the 218,151 tons of fertilizer from the affected territory exported through Baltimore in the test year (22.6 percent of its general cargo exports) was sulphate of ammonia. About 80 percent of this is bagged at the piers, by the use of specialized facilities. No other North Atlantic port except Hampton Roads has provided similar facilities. Also, special bulk-loading facilities have been installed to handle the bulk portion of this commodity.

Relative expenditures for port facilities. — The characteristics of the harbors at the several ports, their proximity and relative ease of access to the open sea, the scope and variety of yards and other rail and marine terminal facilities and equipment provided, and the types, capacities, and

locations of the various physical facilities, including piers, grain elevators, and other installations at those ports, are shown in detail of record.

Expenditures for development of physical facilities at North Atlantic ports in the years 1946 to 1955 aggregated $266,000,000. The portions expended for general-cargo facilities and specialized facilities at the principal ports appear in the following table:

Port	Number of new general cargo berths	Expenditures, 1946-55 (millions of dollars)	
		General cargo facilities	Specialized facilities
New York	32	$92	$22.7
Boston	10	29.3	6
Total	42	121.3	28.7
Baltimore	2	6.8	25.8
Philadelphia	4	6.2	27.6
Newport News	2	1.4	22.6
Norfolk	4	6.5	5.2
Total	12	20.9	81.2

From the foregoing it is apparent that in making these expenditures the southern tier ports have stressed specialized and bulk-cargo facilities while New York and Boston have emphasized general-cargo facilities.

Value of port commerce.—New York is not only the largest tonnage port, but its share of the total value of United States foreign trade also is the greatest. The authority reported the 1956 value of foreign commerce moving through the port is $8.3 billion, an increase of 7 percent over 1955 and 31 percent over 1954. The value of all exports and imports through New York in 1955 was $7.2 billion, as compared with $3 billion for the southern tier ports combined. The total value of such commerce in 1955 for New York was 43.7 percent of the United States total, as compared with 39.6 percent in 1954. 715

The average value per ton in 1955 of exports-imports, exclusive of export coal and grain and import ores and petroleum, was $444 for New York and $247 for Boston, as com-

pared with $145 per ton for Philadelphia, $164 for Baltimore, and $287 for Hampton Roads. The last amount reflects the value of tobacco exports, very little of which originates in differential territory. If tobacco were excluded, the average for Hampton Roads would be $153. The total dollar value of the annual exports-imports through New York from 1887 to 1899 was, roughly, 9 or 10 times that at Baltimore. From 1920 to 1925 this increased to about 20 times, which ratio continued long after 1935. With the increase in volume of bulk cargo after World War II, the lower ratio again generally prevailed. The table in appendix A shows comparative values for New York and Baltimore.

Weight to be accorded the distance element.—There is much evidence of record relating to distances by rail between representative points in the affected territory and the several North Atlantic ports, including Canadian ports; also between them and other interior points and South Atlantic and Gulf ports; and by ocean between these United States ports and representative overseas ports. The respondents and the northern tier port interests deny that they have any significant disadvantage in their rail distances as compared with the southern tier ports. Such distance disadvantages as they have are much less than the substantial differences in distances to and from some other ports which have a parity or near parity of rates, including the Canadian ports, and the wide differences which obtain where the several South Atlantic and Gulf ports are equalized.

The southern tier ports, particularly Baltimore, emphasize the advantage in distance which they have to and from certain points in the affected territory. The average of the short-line distances from class-rate base points in the affected territory is 698 miles to Baltimore, 750 miles to Philadelphia, 804 miles to New York, and 921 miles to Boston. The average distance between Hampton Roads ports and the affected territory is 883 miles, as compared with 853 miles between that territory and New York. It
716 is apparent that considerable disregard of rail distances

is characteristic of all port adjustments, as it was in the establishment of the rates here dealt with. See *Baltimore Chamber of Commerce v. Ann Arbor R. Co.*, 159 I.C.C. 691, 696. In considering this matter in any early proceeding, *In the Matter of Differential Rates, supra* (1905), and the justness of the suggestion that each port should be given the rate to which its location entitles it, this Commission observed that traffic does not stop at the ports but moves to foreign destinations, that more important was the fact that as seaports the four large cities from Boston to Baltimore, inclusive, had a fundamental advantage of location which entitled them to participate in the foreign trade, and that the public interest required that this right be recognized. The conclusion reached (page 77) was that, in the public interest, the rates should be so adjusted "that all the ports and the various lines serving them may fairly compete for this traffic." That this is also the purpose of the 1935 amendment to section 3 of the act was indicated in *Albany Port District Comm. v. Ahnapee & W. Ry. Co., supra; Nueces County Nav. District No. 1 v. Baltimore & O. R. Co.*, 223 I.C.C. 75, 96; and *Port of New York Authority v. Baltimore & O. R. Co.*, 248 I.C.C. 165, 179. In the *Albany* case, at page 162, we said:

> The port rates * * * have, as their chief objective, the maintenance of a competitive relation between the ports. They are not distance rates. * * * adherence to the distance principle is incidental, and always gives way when necessary to the maintenance of the differential relation between the ports.

Steamship services at North Atlantic ports.—The types of ships engaged in foreign commerce on routes to and from the North Atlantic ports include those able to carry a wide variety of cargo, some specially designed to carry only one or more types of cargo, various types of general cargo vessels which also are fitted to carry some specific types of cargo, or specialized vessels which are equipped also to carry some general cargo, generally on deck. The more specialized types are tankers, refrigerated ships, and

coal-carrying vessels. General-cargo vessels carry all kinds of dry nonbulk cargo, as well as some dry bulk cargo, such as grain.

Three types of vessel service are available for ocean cargo. "Liners" are operated by the steamship line on schedules at regular intervals between designated ports. "Tramps," on the other hand, do not operate on schedules, but sail wherever traffic is available. They are the contract carriers of the water shipping business, are usually smaller and slower than liners, and may take a full load for one shipper or partial loads for several shippers. The third kind of service, not important in most foreign trade, is performed by shipper-owned vessels. They may carry freight for hire as well as for their owners' account.

717 General cargo, especially where delivery time is of importance, is most often carried by liners, since the shipper can rely on their published schedules. Where time of delivery is not crucial or when liner space is short, some shippers will use tramps, which generally carry bulk cargo, such as coal, grain, sulphur, fertilizer, or ores and bulk liquids. Shipper-owned vessels usually carry bulk and specialized cargo such as oil, coal, ores, and refrigerator cargo.

The frequency and quality of sailings at a port are largely dependent upon the availability of cargo. If the volume of traffic is adequate, good and frequent sailings will be available. Rescheduling and rerouting of vessels to take advantage of cargo availability are relatively simple matters. Frequently the only consideration, except where the cargo is not suited to the type of vessel space, is whether the new cargo represents a profitable haul as compared with other uses which may be made of vessels.

Liner operators commonly call at more than one port in a range so that vessels sail fully loaded, and their schedules are altered accordingly. Rerouting of tramps operating on voyage charter to secure desired cargo is characteristic of such an operation. Thus, availability of freight is a primary consideration as to these types of transportation.

The most important factors which influence the shipper of export or import freight in the choice of a port are the total cost of hauling the goods, the total time in transit via competing ports, and the service available at each port. The hauling cost involves principally the ocean freight and the rail freight rate. Other lesser items are possibilities of damage caused by excessive handling in congested ports and of incurring storage owing to congestion or delayed sailings.

Importance of time in transit depends upon the kind of freight. As freight rates are small in relation to the value of high-grade traffic, they may be of less concern to a shipper than time in transit, and dissuade him from routing such freight over a lower cost route when the higher cost route affords the quickest service. On the other hand, the shipper of low-grade freight, as to which the transportation cost represents a greater proportion of the delivered price generally uses the lowest cost route to remain competitive, and time in transit is a secondary consideration. Port services, particularly forwarding, banking, insurance, brokerage service, and availability of sailings are important, but relatively less so in the case of low-grade freight than of high-grade tonnage. Also, shippers of low-grade commodities such as ore, grain, coal, and other bulk cargo which usually move in fungible and continuous lots, are not greatly concerned with time in transit.

Comparison of dry-cargo vessel services at New York and Baltimore.—The consist of waterborne tonnage at the southern tier ports is for the most part bulk-cargo, such 718
cargo comprising about 90 percent of Baltimore's tonnage. Acting on the premise that the volume of general cargo which they can attract is a significant measure of the economic wellbeing and prosperity of a port community, these ports presented a comparative study of general dry-cargo steamship service available at the five major North Atlantic ports. Based on data supplied by the U.S. Maritime Administration showing all general-cargo vessels in foreign trade calling at one or more of these ports in the 6 months ended December 31, 1955, which is indicative of

the relative quantity and quality of the service available, the following comparisons were developed:

	Number
Ships calling at New York	2,720
Ships calling at Baltimore	1,357
Shipping calling at New York but not at Baltimore	1,532
Ships calling at Baltimore but not at New York	181
Ships that both loaded and discharged general cargo at New York but not at any other of the 5 ports	678
Ships that both loaded and discharged general cargo at Baltimore but not at any other of the 5 ports	19
Direct-inbound ships unloading general cargo:	
At New York	1,451
At Baltimore	171
Direct outbound ships loading general cargo:	
At New York	1,767
At Baltimore	149

The order in which ships arrive at and depart from the several ports included in their itinerary is important to shippers, particularly of general cargo. Topping off with such cargo at New York is a primary characteristic of the trade. As indicative of the superior quality of the service at that port, a count of vessels which called there and at Baltimore during this period, and the elapsed time between their arrival at or departure from one as compared with the other, shows that, as to earlier arrivals, New York was favored with an advantage of 882 ship-days, while Baltimore's advantage was 246 ship-days. The advantage in later departure time was 1,039 and 199 days, respectively. The record shows similar advantages in service of general-cargo vessels, New York over Hampton Roads.

Numerous other comparisons show New York's pre-eminence in general-cargo services and in direct sailings over the major trade routes. For example, New York had 1,792 direct general-cargo departures to 180 first foreign ports of call, contrasted with 162 such departures from Baltimore to but 53 such foreign ports. New York had 1,475 direct general-cargo entrances from 200 different last foreign ports of call, as compared with 229 and 89 for Baltimore.

Data to rebut the foregoing showing were presented on 719
behalf of New York. These relate to dry-cargo tonnage and to dry-cargo vessel sailings for 1951 and 1956 at New York and Baltimore. As they include bulk-cargo tonnage, such as large volumes of coal and iron ore, and vessels reported as bulk-cargo carriers, they are not indicative of the general-cargo services available at those ports.

The record is convincing that New York has a preponderance of excellent steamship services as compared with the southern tier ports; and that its general-cargo services far surpass those at such ports, and afford much more frequent sailings and service to and from a far wider range of trading areas. New York concedes its supremacy in this respect, but contends that its superiority is rapidly diminishing. To support this claim it relies also on dry-cargo vessel sailings, including bulk-cargo vessels which handle increasing volumes of coal and iron ore and some grain, of which only the latter is embraced in this proceeding.

Because of more frequent steamship services to a wider range of foreign ports available at New York than at southern tier ports, expenses incurred by shippers incident to delays at the latter are frequently avoided at New York. Free time accorded by the railroads, and wharfage and storage charges on import and export freight when held on their piers, are the same at all North Atlantic ports. This free time is 7 days on export freight and generally 5 days on import freight.

On export traffic the consignee or exporter orders the freight delivered by lighter to the steamship line's pier

within the free-time period. Thus, storage charges on export freight which accrue after the expiration of free time when the freight is assembled on railroad piers, as at the southern tier ports, can be avoided at New York by ordering delivery to the steamship line piers within the free time. On import freight discharged at New York to a pier controlled by the steamship line, the latter allows the consignee 5 or 6 days to remove the freight. Since the railroads do not receive this freight directly from the ship, no question of free time arises as to it.

The cost to the shipper occasioned by the delay which occurs between loading at Baltimore and departure from New York (or arrival at New York and unloading at Baltimore) is frequently greater than the differential. A map exhibit presented by the authority showing rail terminal facilities at New York carries the inscription "Save Time — Save Money. Ship Via Port of New York." The witness through whom it was offered explained that the money saving would vary with individual shipments of a large variety of producers in the affected territory, but
720 that the authority believes that on some of their shipments, dependent upon the facilities and services available at New York, such savings are effected.

Rail terminal service on foreign freight at New York. — At New York, except for a few railroad-owned piers of little or no importance which are used for loading or unloading ores and scrap, the railroads have no piers comparable to regular cargo piers provided by them at the southern tier ports. Pier facilities at which the terminal operations of steamship lines are conducted are either owned by them or leased from the city of New York or the authority. They are generally on Manhattan Island or Brooklyn waterfronts and to a smaller extent on the lower Jersey shores or Staten Island. Except for some of the banana traffic which is unloaded at a private terminal of the New York Central operated by the United Fruit Company at Weehawken, N. J., ships loading and discharging general cargo do not generally dock at the railroad terminals in New York Harbor. Such traffic moving to and from New York by

rail is usually unloaded from or loaded to cars by manual labor at railroad pier facilities, mainly on the New Jersey side of the harbor, where it is transferred to or from lighters and lightered, or trucked in lieu of lighterage, between these piers and the steamship piers at various points in the harbor.[8] A relatively small proportion of the traffic is transferred by car float.

During September 1956, of the export-import tonnage handled at New York by four of the respondents and the protestants which serve the port, 16.6 percent was transferred directly between car and ship, and the remainder was handled by railroad marine equipment or trucked in lieu of lighterage to or from shipside. The traffic which is loaded or unloaded directly between car and ship consists almost entirely of bulk commodities. For example, the New York Central's pier 9 at Weehawken is its only pier in the New York terminal area used primarily for direct docking. It is used almost exclusively for bulk import ore. That respondent has but one grain elevator, at pier 7, Weehawken. Its capacity is 2 million bushels. Grain handled there may be either loaded directly into ships or transferred to them at other points in the harbor, using floating elevators.

Supplementary port services at North Atlantic ports. — New York, in addition to its preponderance of steamship services, has a wealth of supplementary port services. Their several functions and the influence which they exert in supporting the movement of cargo, and in promoting and 721
expediting foreign trade, were shown in detail by the protestant railroads in a comprehensive survey of 12 different types of such services available at the southern tier ports and New York. They include international freight forwarders, customhouse brokers, international banking facilities, steamship line representation, consular services,

[8] A description of the rail and water terminal facilities at New York, the ways in which freight is handled at that port, and the lighterage limits of the harbor may be found in *Lighterage Cases, supra, at pages* 484 to 488. See also *State of New Jersey v. Baltimore & O. R. Co.*, 245 I.C.C. 581, 585-590.

combination export managers, foreign trade zones, commodity exchanges, shipbrokers, marine insurance, foreign government purchasing agencies, and foreign chambers of commerce. Among other functions, these contribute to the speed and promptness of movement of cargo, this effecting reductions in interest charges and meeting of letter-of-credit deadlines, and avoidance of charges and penalties which arise from unfamiliarity with the demands of foreign-trade procedures.

The survey disclosed a notable concentration of these and other interrelated services at the port of New York. Among other advantages of such concentration, not readily appraised, are the personal contact necessary in the effective movement of cargoes, the knowledge of experienced personnel, and the specialization available in all types of services, particularly required by various types of cargo.

Although the record is replete with details showing New York's superiority as to each type of service organization, only the principal ones relating to international freight forwarders will be set out. Their principal duties include the tracing of shipments to the seaboard where their principal offices are generally located, and, when necessary, to the foreign destination; booking or arranging for cargo space and the consolidation of ocean shipments; preparation and processing of necessary papers relating to the exporting of shipments; clearance of the shipments in accordance with regulations of the U.S. Government, and arranging for certification of consular documents; and clearance of imported commodities through United States customs when the forwarder functions as a customhouse broker. The forwarder also may arrange for cargo insurance, packing and crating, inspection, marking, and warehousing or storage. The foregoing services are essential in promoting foreign trade and are relied upon by shippers and consignees as well as the ocean carrier whom the forwarder serves as agent. The forwarder also provides information on ocean and land freight rates, sailing schedules, sales outlets, and sources of supply in this country

and abroad, and rules and regulations affecting foreign trade. In his capacity as agent of the ocean carrier, he collaborates in performing essential services and substantially influences the movement of the traffic through ports where his offices are located, rather than through a rival port where his fees must be divided with the agent there employed.

The number of registered foreign-freight forwarders who have their main or branch offices at each of the ports is as follows: 722

	Main offices	Branch offices
New York	924	55
Portland	4	(1)
Boston	23	(1)
Philadelphia	29	11
Baltimore	23	16
Hampton Roads	13	10

[1] No data shown.

International freight forwarders maintain 49 main offices and 60 branch offices at points in differential territory. Of 32 main offices of those branches located at the 4 ports, 31 are in New York and 1 in Philadelphia. Branches of New York firms constitute 44 percent of all such forwarders in Chicago.

Effect of differential on shippers' use of ports. — A number of shippers in the affected territory testified in support of the proposed equalization. Several of them are using Great Lakes, South Atlantic, and Gulf ports for substantial portions of their import and export traffic, lower rates being an important, if not the governing, factor in the choice of those ports. The authority states that diversion of general cargo from the respondent railroads serving New York has been primarily to railroads serving South Atlantic and Gulf ports, not to those serving other North Atlantic ports.

A manufacturer of paper products at Middletown, Ohio, receives from 10,000 to 15,000 tons of woodpulp each year. It is bought f.o.b. Baltimore, because of the lower import rate than from Philadelphia, New York, or Boston, and

its tonnage moves either via Baltimore or via Portland over differential routes through Canada on rates the same as from Baltimore. Its export shipments of 1,500 to 2,000 tons annually move through West Palm Beach, Fla., New Orleans, La., or Norfolk because of more favorable freight rates. A steel producer with plants in Pennsylvania, Ohio, and Michigan ships 95 percent of its export traffic through Baltimore because of the freight differential as contrasted with the northern tier ports. Equalization of the rates to these ports would make available to it more sailings than the port of Baltimore affords.

A manufacturer of pig iron and ingots molds at Neville Island and Sharpsville, Pa., exports a substantial volume of pig iron, about 80 percent of which moves through Baltimore by reason of the differential and the remainder by rail-barge routes through New Orleans. If the rates were equalized with the northern tier ports it would use all of the ports. A manufacturer of steel exports, through its
723 export subsidiary, over 100,000 tons annually of plates, sheets, and other articles from five plants in the affected territory. As to most of this, it controls the selection of the port; but the ports used are not shown. A substantial portion is said to be routed through Baltimore and Hampton Roads because of the differential. However, only 5,416 tons moved through the latter port in the test year as compared with 580,073 tons through New York. A large manufacturer of heavy machinery with several plants in differential territory exports over 35,000 tons a year, about 80 percent of which moves through Gulf and South Atlantic ports. Its export traffic manager, with offices in New York, testified that in recent years it was forced to divert traffic previously moved through that port to other ports because of lower inland rates. However, the only example given of such diversion was Venezuelan exports, about 95 percent of which is now moved through New Orleans. Another manufacturer of machinery ships 75 percent of its exports, or about 15,000 tons, through New York to conform to conditions in letters of credit used by its customers. It is endeavoring to have these conditions made applicable through lower rated ports.

The Union Carbide Corporation imported 378,438 gross tons of chrome and manganese ores in 1956 to three of its plants in Ohio and West Virginia, which are in the affected territory except as to Hampton Roads ports. Less than 1 percent of this moved through New York and less than 2 percent through Philadelphia. The remainder entered at Baltimore, from which the rates are 60 cents and 20 cents per gross ton lower than through New York and Philadelphia, respectively. These ores arrive in shipload lots at ports designated by the receiver. Frequently, the plant to which the ore will ultimately move is not known and the ships are ordered to Baltimore to obtain the lowest inland rate. This shipper urges that, with equal rates, ships could be allocated freely according to the port's ability to accommodate them, which would permit a more equitable allocation of cars required for loading and would reduce congestion at the ports.

It is apparent from the foregoing testimony that at least some shippers regard the differential adjustment as a controlling consideration in their choice of a North Atlantic port for shipments to or from the affected territory.

Rates to and from Boston. — The Port of Boston Commission lays stress on the fact that the port of Boston has been able to attract but little affected-territory traffic, and that the respondents, including the Boston railroads, since about 1935, have operated under a serious handicap. As early as 1923, Boston asserted that because of the differentials, export and import traffic between the affected territory and its port had been reduced almost to the vanishing point and that they prevented the movement of bulk cargo through that port. *Maritime Assn., Boston Cham. of Com. v. Ann Arbor R. Co., supra.*, page 545. 724

It is urged that the reduced rates for Boston are lawful and should be permitted to take effect regardless of the conclusion which may be reached as to the respondents' proposal with respect to New York. As here presented, the respondents' proposal contemplates equalization of the northern tier ports as a group with Baltimore. The aver-

age distance from Boston to points in the affected territory is 223 miles greater than from Baltimore and 116 miles greater than from New York.

Boston's total foreign-trade tonnage has expanded substantially since 1935 despite equalization of the ocean rates, as shown in the table below. But, as presently will appear and as indicated in appendix F little traffic, other than export grain, moves between the port and the affected territory:

Oceanborne foreign commerce through Boston

[Thousands of gross tons]

Year	Export	Import	Total	Percent of United States
1935	280	1,852	2,132	3.5
1940	395	2,438	2,833	2.6
1955	952	5,467	6,419	2.9

An analysis of Boston's tonnage since 1945 shows that it is primarily an importing port for bulk cargoes, which totaled 44 million net tons in the years 1946 to 1955, inclusive, or about 82 percent of its imports. They consisted mainly of petroleum products and moved almost entirely to destinations in or near the Boston switching district. Of 10,140 carloads of general-cargo imports in the test year, only 680 or 6.7 percent moved to the area west of Buffalo-Pittsburgh, and 8.4 percent moved to Canadian destinations. Of the 680 carloads, 270 moved over differential routes through Canada at rates lower than the standard rates. In that year, of 6,713 carloads of general-cargo exports, only 93 or 1.3 percent originated at and west of Buffalo-Pittsburgh, and of the 773 which moved to or from that area only 30 percent were transported over the New York Central into or out of Boston. Including grain, the Boston railroads handled only 5.6 percent of the export carloads and 1.4 percent of the import carloads which moved between the affected territory and Boston, Philadelphia, Baltimore, and Hampton Roads.

725 The bulk of the foreign traffic in which the New Haven participates is that moving to and from nonaffected terri-

tory, principally New England. As to this segment, the great preponderance of the imports and most of the exports, aggregating about 7,000 carloads in the year ended July 31, 1956, flow through New York. Its traffic witness stated on cross-examination that, as compared with other railroads serving that port, it was under a definite handicap in competing for traffic from and to the affected territory.

Grain, Boston's principal bulk export, averaged about 18 million bushels annually from 1907 to 1919, and 5.2 million bushels from 1920 to 1955. The port attributes the decline to loss of its ocean rate advantage, which tended to offset the inland differential at the southern tier ports.

New England imports many raw materials from which it manufactures generally low-density, high-valued articles. These, when exported, are usually referred to as top cargo, and seek a port which has a multitude of shipping services. As the area has few heavy, basic industries and produces few basic raw materials, Boston lacks sufficient bulk and bottom cargoes and commodities such as heavy machinery, automobiles, and trucks to attract ships. As a consequence, the limited sailings from the port deter shippers in its immediate hinterland from using it, causing further reductions in ship calls. Scheduled sailings for representative periods shown by Boston were 473 at New York, 220 at Philadelphia, 242 at Baltimore, 175 at Hampton Roads, and 65 at Boston. Of the last, in 47 instances Boston was the first port of call to pick up export cargo, the least desirable schedule position.

Considering that most of the general-cargo traffic of the North Atlantic ports here concerned is attracted to New York despite its differential over the southern tier ports and over Albany, the failure of Boston, with rates the same as New York, to attract a larger volume of the traffic must be ascribed to factors other than an unfavorable rate relationship, chief of which are the superior steamship and port services which New York affords. The fact, as above shown, that much of the New England export-import traffic moves through New York confirms this.

As to grain from the affected territory, traffic said to be more sensitive to rate differences than general cargo, Boston has been able (as shown in appendix F) to attract considerably more than New York, and about 2.5 times as much as Albany, which has lower rates. Such a marked difference in Boston's ability to attract these two types of traffic strongly suggests the existence of influences affecting the choice and use of ports far more powerful than the present port differentials. In *Maritime Assn., Boston Cham. of Com.* v. *Ann Arbor R. Co., supra*, at pages 563-564, referring to a decline in Boston's tonnage prior to 1921, we observed that the extent to which this resulted from the port differentials was difficult to determine, and that one contributing cause of the difficulty was that Boston had equal rates with New York, its nearest and most powerful competitor. In *State of New Jersey* v. *Baltimore & O. R. Co., supra*, we disapproved a plus charge on this traffic to New York City over the rates to the New Jersey side of the harbor, as the complainant and the Boston intervener sought, and found the assailed rates to New York not unlawful. We found also that disturbance of the rate parity between the two sides of New York harbor, as sought, which would also have disrupted parity of rates as between New York and Boston, would most likely precipitate a chaotic situation such as prevailed prior to 1882.

In support of the argument that so long as the differential continues, virtually no affected territory traffic can move through Boston, that port points to the much larger movement of woodpulp to the affected territory from Portland than from Boston. The movements in the test period were 10,574 tons and 1,125 tons, respectively, as compared with imports of woodpulp approximating 40,000 tons and 100,000 tons, respectively. It attributes this to the fact that Portland's import rates, which apply over routes through Canada, are on the Baltimore basis and lower than those from Boston. It argues that this confirms the testimony of shippers and transportation experts who testified in support of the proposed equalization as to the effect of rate differentials.

The import rates from Portland have been on the Baltimore basis for over 30 years. Being ice free in winter, that port serves as a winter port for Canada and is accorded the same import basis as Halifax, St. John, and Montreal on traffic routed through Canada. The evidence is clear that the impact of the differential is of itself insufficient to induce the movement through Portland. Virtually the only commodities which are imported through that port are woodpulp and china clay, for which special handling facilities are provided at the port. They are raw materials used in the paper industry, which is the chief industry of Maine. As less than one-fifth of the woodpulp and one-fourth of the china clay move to the affected territory, it is evident that the movement to that territory is mostly incidental to the movement through Portland for the local market.

In seeking to show that the differentially lower rates from the southern tier ports are an absolute bar to its participation in the North Atlantic traffic, Boston also relies on evidence presented by the General Services Administration, an agency of the Federal Government, which supports the respondents. This agency directs the routing of about 300,000 tons of import traffic annually to the affected territory. However, it moved no imports through Boston in 1955 and only 339 tons in 1956, contrasted with 294,000 and 195,000 tons in those respective years through Baltimore. The remainder of its North Atlantic imports moved through Hampton Roads and Philadelphia. It states that equalization would enable it to route traffic equitably as between the various North Atlantic ports. However, it moved none through Portland, although the same rates are available from that port as from Baltimore. 727

Import traffic through Portland.—The general basis of import rates from Portland over routes through Canada has been indicated. Except on import clay, specific commodity import rates over standard routes are not generally published from Portland. The Main Central, joined by the Maine Port Authority, The Associated Industries of Maine, and the Maine State Chamber of Commerce, introduced

evidence in support of maintaining the present differential under Boston and New York on imports through Portland over routes through Canada to the affected territory. They assert that any reduction of tonnage resulting from its elimination would have a serious economic effect upon the entire State of Maine, as the port now has few scheduled sailings, and as to imports it has no regular arrivals. If entry of the only imports, woodpulp and clay, should be shifted to other ports outside the State, it would result in additional expense for land transportation to Maine industries, and would adversely affect their competitive position.

The Maine Central expects no increase in exports to Portland if equalization is effected, as any export traffic which might be diverted for the southern tier ports would probably be attracted to the large-volume ports of New York or Boston. It points to the decline since 1952 in the volume of import woodpulp which it handled from Portland to the affected territory as an indication that the differential is not large enough to maintain or increase this movement.

The imports of china clay through Portland increased from 46,938 tons in 1947 to 73,564 tons in 1956. The Maine Central's movement to the affected territory increased from 10,266 tons in 1952 to 16,408 tons in 1956 as the result of solicitation by rail and port representatives and a large investment for handling and storage facilities at Portland. These facilities, mostly of recent construction, have a capacity of 14,500 tons and were designed especially for china clay. No import china clay moves through Boston as that port does not possess the necessary special facilities.

Rates to and from Albany.—Export and import rates between Albany and the affected territory have been the same as those to and from Philadelphia since 1936. However, except for some export grain, averaging about 15 percent of the movement through all North Atlantic ports since 1946, traffic between Albany and that territory has been almost negligible. Excluding export grain and coal and

import iron ore (of which none moves through Albany) and petroleum, it has attracted less than 1 percent of the total movement through North Atlantic ports. Of the tonnage moved during the test year, only 1.7 percent of the exports and 0.1 percent of the imports through those ports moved through Albany, as contrasted with 10.6 percent of the exports and 6.6 percent of the imports through Philadelphia, although both ports have the same rates.

The port takes the position that the present adjustment discourages or prevents its use; that it deprives it and shippers using it of just, reasonable, and nondiscriminatory rates; and that its favorable geographic location, being served by a water level rail route and transportation over the barge canal and the Great Lakes, warrants a lower level or rates based on value-of-service as well as cost-of-service considerations. Accordingly, to encourage and promote freedom of movement through the port, it urges that it should be accorded rates no higher than those to and from Baltimore and Norfolk.

Government export shipments.—The U.S. Department of Agriculture, through its Commodity Stabilization Service and Commodity Credit Corporation, exports large quantities of grain and processed foods through the North Atlantic ports, generally paying the transportation cost to the port of exit. It favors equalization of these ports at the lowest level of lawful rates because of the benefits which producers and shippers of these products and its export program would derive therefrom. Selection of a port of export involves many factors. A number of problems are encountered in routing the shipments, such as car supply, terminal charges, availability of warehouse or elevator facilities at the ports, and the coordination of their arrival with sailing schedules. Other conditions, such as strikes which are beyond the control of the Department, also influence the movement. Its field offices directing the shipments, other things being equal, use the port which will afford the lowest cost, but in some circumstances the port designated or preferred by the receiver is used.

In the year ended May 31, 1957, about 235,000 tons of processed foods were shipped at the direction of the Department's Chicago and Cincinnati offices from undisclosed origins. Of these, 48,000 tons moved through Philadelphia and somewhat less through Baltimore, Norfolk and Newport News. About 62,000 tons moved through New York, 6,000 tons through Boston, and none through Albany or Portland. The shipment of grain by these offices from
29 January 1 to June 14, 1957, was about 53 million bushels of which about 29 million moved through the southern tier ports and 24 million through the northern tier ports, including about 11 million bushels through Boston and 9 million bushels through Albany.

Government-controlled import traffic.—The General Services Administration presented evidence in support of the respondents. It states that in the interest of economy, its duty and interest is to seek the lowest reasonable rates "in the furtherance of its shipper * * * interest," as a representative of the Government's executive agencies, and that with respect to foreign commerce this means that, other factors being equal, it should route its traffic through the ports having the lowest transportation cost. Accordingly, it favors equalization because it would enable it to select the port used on the basis of efficiency and service.

It presented no data as to its export traffic, which is of much less importance to it than the imports. Its choice of ports of export is dependent principally upon the availability of sailings and the total land cost to the foreign destination. In 1955 and 1956 the tonnage of imports through North Atlantic ports to the affected territory for which it was in a position to designate the port of entry, and which represents about 60 to 70 percent of its imports and at least 10 percent of all import tonnage here concerned, was as follows:

Port	1955	1956
	Tons	*Tons*
Boston		339
New York[1]	22,246	26,598
Philadelphia[1]	54,797	14,951
Baltimore	294,515	197,805
Newport News	21,404	30,340
Total	392,962	269,033

[1] Includes movements through other ports or subports in the same area.

The imports through Baltimore were principally ores, other than iron ore. Although the differentials are important to it from the standpoint of economy, many considerations other than the rail rates have affected the selection of the port used. Among those cited are the practices of private industry and established markets, such as the principal market for crude rubber, which is in New York, and the fact that at that port the best inspection service is available. Also, vessel operators have some measure of control over ports of call and will schedule only those at which there is adequate traffic. That such considerations often have controlling importance is shown by the fact that the movement through Newport News was only about a tenth of that through Baltimore although the rates were the same, and that, except for a small volume through Boston in 1956, no northern tier port other than New York was used, although such ports had rates the same as or lower than those from New York. 730

Other grain shippers.—The Board of Trade of the City of Chicago, two large grain dealers with elevator capacity of 11 million bushels in that city, and a cooperative association of country elevators in Iowa and Minnesota, which operates large elevators in Des Moines, Iowa, and Chicago, all of whom are interested in export movements of grain, presented evidence in support of the proposed equalization. On grain from Chicago, as well as from Duluth and Minneapolis, Minn., Peoria, St. Louis, and other mid western markets, the rates to Baltimore and Hampton Roads and the Gulf ports are generally the same. Those to New York and Boston are 1.5 cents higher, equivalent to $9,000 on 1 million bushels of wheat. Despite this difference, substantial volumes of grain from the affected territory move

through Philadelphia and the northern tier ports. In the test year this movement was 30 percent of the total from that territory to the North Atlantic ports. Owing to the keen competition in the marketing of grain and in the interest of an expanding export trade, these parties urge that equalization of the Gulf and North Atlantic ports be accomplished by applying the Baltimore basis of rates to all points.

Revenue-cost comparisons.—The respondents presented no cost evidence, except terminal costs of the New Haven at Boston as later indicated herein, in support of their claim that their proposed rates would be compensatory. Because those rates reflect relatively small reductions, a study of the costs was deemed unnecessary, nor did they consider such a study feasible or justified by the expense involved. They contend also that a showing of unit costs at New York would be irrelevant as they would be based on their presently diminished traffic volume and would reflect large investments in port facilities made in times of heavier traffic, while their proposal, by attracting increased volume, would reduce unit costs. Accordingly, to sustain their statutory burden of proof, they relied initially upon the minimal amounts of the proposed reductions and a prima facie showing of the revenues.

For example, the ton-mile revenues under the present and proposed rates from Chicago to New York are 8.18 and 8.09 cents for first class, and 1.15 and 1.03 cents for class 13, based on the docket 28300 short-line distances. The proposed rates to and from New York would yield average revenue of $19.20 per ton on import and $18 per ton on export traffic, as compared with averages of $8.12 and $9.38, respectively, to and from Baltimore. These average revenues reflect the differences in consist of the
31 tonnage which flows through the ports, particularly the relatively large volume of bulk traffic through Baltimore and the preponderance of the high-grade general cargo through New York.

The protestants, relying upon *Boston & M.R. v. United States*, 153 F. Supp. 952, in which the court held that we had discretion to reject a rate as unlawful which does not return out-of-pocket costs, undertook to show by reve-

nue and cost relationships, determined as hereinafter described, that the proposed rates to and from New York would not be compensatory. Comparisons of the revenues on representative shipments of each commodity which moved in volume of 1,000 tons or more annually to or from that port in the test year, with estimated out-of-pocket costs of handling as of January 1, 1958, obtained as hereinafter explained, show average ratios of cost to revenues for the 174 carloads of import traffic of 111.6 percent, and for the 363 carloads of export traffic of 108.9 percent. The respondents agree that such traffic was representative of that moving through the port as to consist, interior destinations, and average loadings. However, as the protestants' showing is limited to cost for general cargo handled by the predominant or normal method at New York, no revenues were shown and no costs determined for bulk commodities handled by direct transfer, such as grain and ore which are transferred by special facilities at southern tier ports.

The cost-revenue ratios on individual shipments vary widely; for example, on imports as between commodities, from 78.3 percent on pig tin to Chicago to 158.8 percent on canned meats to Cleveland; and on exports, from 63.7 percent on cash registers from Dayton, Ohio, to 195.4 percent on salt from Manistee, Mich.

The cost evidence.—The protestants show their costs of performing the service to and from the southern tier ports and New York and certain factors of the costs to and from Boston. Discussion of such evidence will relate mainly to the New York costs. The out-of-pocket costs consist of inland terminal costs, line-haul costs, and port terminal costs. The inland terminal and line-haul costs were obtained by use of Rail Form A average unit costs for class I railroads in the eastern district as a group, based on expenses and statistics of the year 1955, eliminating expenses inapplicable to this traffic and also loss and damage expense. These were adjusted to reflect the wage and price level of January 1, 1958, a factor of 13 percent circuity to cover movements over actual routes used, and a return of 4 percent on investment after Federal income taxes.

The parties are in substantial agreement as to the correctness of data for these two elements of cost. The inland terminal cost used is the same for traffic to or from any of the ports. The line-haul average costs, which reflect
732 differences in average distances to and from the several ports, are higher than those to or from Baltimore by the following amounts per car and per 100 pounds, respectively: Philadelphia, $14.80 and 2.7 cents; New York, $30.22 and 5.5 cents; and Boston, $63.29 and 11.4 cents.

The principal area of controversy concerns the port terminal costs, especially those for the marine operations at New York, which the respondents and the authority contend are inflated. As stated, the respondents presented no cost data and refused to join the protestants in developing them for all railroads which serve New York. They sought, however, by rebuttal evidence, to adjust and restate the protestants costs to and from New York, thus obtaining a lower level of such costs.

The peculiar methods used in handling most of the import-export traffic at New York have been described. Typical elements of these costs include the expense of switching between trainyards and the float bridges or lighterage piers, station service, float-bridge service, and water operations. Freight trucked in lieu of lighterage, for example, crosses the float bridges, is carfloated across the Hudson River, receives pier-station handling on Manhattan Island, and is trucked thence to the steamship pier. As the respondents' records of expenses pertaining to their operation at New York were not made available to the protestants, the latter relied upon special studies of their own September 1956 operations at the port, exclusive of direct transfer between car and ship, from which they developed a weighted-average cost for the Pennsylvania, and for the Baltimore & Ohio and the Central of New Jersey which pool their New York Harbor operations. As shown in appendix F, these carriers handled about one-third of the considered traffic to and from the port during the test year and consider their operations typical of all the New York Harbor operations in handling foreign ship-

ments. The respondents assert that they are not representative of those of the other New York lines, in that the proportion of the traffic handled by each of the four different methods of operation differs from those of the respondents, and the consist of commodities handled likewise varies. The following table shows the proportion of the traffic handled in September 1956 at New York which was transferred in each of the four types of terminal service:

Carrier	Lighterage	Car float	Trucking in lieu of lighterage	Direct
	Percent	Percent	Percent	Percent
New York Central	51	5.5	13.4	[1]30.1
Lackawanna	93	0.9	6.1	0
Erie	80	11.7	8.3	0
New Haven	67.3	6.8	25.9	0
Pennsylvania	76.7	2.2	13.3	7.8
B. & O.-C.N.J.	40.1	0.2	9.9	49.8

[1] Import tonnage exclusively.

No data were reported by Lehigh Valley, but its wit- 733
ness referred to 4 percent of its traffic as being handled directly between ship and shore. As the table shows, the preponderance of the export-import traffic is handled in lighterage service. Lighters are also used in the delivery of domestic freight, particularly bulk cement by the New York Central and the Central of New Jersey. The loading of cement averaged 350 tons per lighter, as compared with about 60 tons for export-import freight.

The protestants' study includes no costs for the 13 percent of their traffic which was transferred directly, as they were concerned only with costs relating to the predominant types of transfer service used. This represented 83.4 percent of the September 1956 traffic of both the respondents and the protestants at New York Harbor. The remainder of 16.6 percent, which was transferred directly, included 14,288 tons of export scrap iron handled by the Central of New Jersey, embraced in the 49.8 percent indicated in the table. This movement has since dried up. Excluding this tonnage, the remainder of that carrier's tonnage transferred directly was 28 percent of the total.

As in the case of the New York Central's 30.1 percent, this consisted principally of bulk imports, such as ores, and some bananas transferred directly. The respondents criticise these harbor operating costs as not representative of the costs of their operations, but they did not support their position by evidence of specific differences in the cost of these operations.

Another area of disagreement is the degree in which the New York port costs, particularly those incident to the respondents' marine operations in the harbor, are variable with changes in traffic volume. The protestants contend that such operations, based on past experience, vary directly with fluctuations in port traffic volume and, as lighterage at New York is principally incurred on export-import freight, expenses thereof are in the nature of "solely related" expenses. The record shows that in 1956 the protestants' marine equipment in New York Harbor was almost fully utilized. They accordingly treated their vessel and lighterage pier operations, also trucking in lieu of lighterage, as 100 percent variable and included, as return on investment, 4 percent after income taxes of the entire investment in marine and other equipment and in lighterage piers. The respondents contend that, on the average, out-of-pocket portions of such expenses are about 60 percent of fully distributed costs. For some of the accounts they use very low ratios, such as 10 percent for repair of floating equipment, a major item of the marine expense, based on the premise that an increase in their traffic can be accommodated by handling additional tonnage in their lighters and more cars on each float. However, they treated investment in floating equipment as 100 percent variable, on the assumption that substantial increases in traffic would require adding more units "in the long term."

The record shows that, except in wartime, the loading of lighters, the number of lighters per tug tow, and the number of cars per carfloat-day have not varied substantially with changes in traffic volume, and that the service requirements of customers, the nature of the operations, and scheduled deliveries to meet ship loading or sailing sched-

ules, limit the loading that can be handled in a given lighter movement, which averaged about 60 tons for the New York Central.

The respondents applied a variable portion of 50 percent to a second large item, operating floating equipment, two-thirds of which is wages of tug and barge crews. These expenses relate to the actual operation of this equipment, and from the long-term standpoint, such as here where rate relationships of a permanent nature are contemplated, they would be almost 100-percent variable with changes in traffic volume.

The respondents' revision of the protestants' costs, achieved principally by use of a minimum out-of-pocket level for the principal port costs, shows that for the general-cargo traffic as a group the overall costs would be about 81 percent of the revenue, contrasted with costs computed by the protestants, based on a solely related level of port costs, about 9 percent higher than the revenue. In our opinion, the out-of-pocket ratio of these port expenses used by the respondents is too low and that of the protestants is too high. We conclude that the traditional estimated level of 80 percent of the fully distributed costs should be used to ascertain the out-of-pocket costs of moving this traffic.

After restatement of the protestants' costs to reflect port costs computed on that basis, and giving effect to adjustments in other disputed but less important items of those costs, application of the resulting costs to the New York traffic indicates that the revenue from the proposed rates would equal or exceed by a very small margin the estimated out-of-pocket costs. However, a presentation of costs adequate to determine whether the proposed rates would be reasonably compensatory should embrace all types of traffic which those rates are expected to attract, and should reflect the costs of the specific methods by which they would be handled. It may be that other traffic would be forced to absorb a larger portion of the constant costs in order to maintain a national transportation system conforming to

the ultimate objectives of the national transportation policy.

Port costs. — An analysis of the cost data of record was made to show the relations between the terminal costs of
735 the ports. It reveals the weighted average of the full port costs of handling export-import traffic (boxcars-general cargo) of the several protestant railroads at each of the ports served by them, based on traffic handled in September 1956, with expenses adjusted to the July 1, 1957, level, and similar costs for the New Haven at Boston based on traffic and expenses in May 1957. The costs associated with the number of cars handled and those associated with the tons handled are as follows:

Port costs, export-import (boxcars—general cargo)

Items	New York	Boston	Baltimore	Philadelphia
Costs per car:				
Switching (including some station expenses)	$28.05	$26.03	$20.19	$22.37
Float bridge, car float, lighterage bureau	9.31			
Car detention		12.24		
Total cost per car	37.36	38.27	20.19	22.37
Costs per ton:				
Platform handling (including some station expenses)	4.58	3.22	2.76	3.58
Lighterage and trucking in lieu of lighterage	4.99		.35	
Total cost per ton	9.57	3.22	3.11	3.58

Other considerations. — In the test year about 55 percent of protestants' export-import traffic of the commodities embraced herein through the southern tier ports was to and from the affected territory, and 63 percent of that traffic between Baltimore and Hampton Roads and the interior moved to and from that territory, while only about 40 percent of the export-import traffic of the New York Central originated or terminated in that territory. Data from which a comparable ratio for other respondents serving New York might be determined were not supplied. The relatively small proportion of Boston's traffic which moves to and from that territory has already been shown. Thus, it is apparent that the southern tier ports, especially Baltimore and Hampton Roads, are much more dependent upon

such traffic and have far less support in the hinterlands which they serve than the northern tier ports served by the respondents.

Data compiled from the traffic study show that the considered traffic which moved through New York and the southern tier ports, over 50 export commodities and about the same number of import articles moved exclusively through New York; that over 90 percent of the following exports moved through that port: Flour, ammunition, fresh meats, automobiles and trucks, soybean oil, agricultural implements, glassware, paint, and forwarder traffic. From 70 to 100 percent of the following imports, representing the more substantial tonnage volumes, also moved through New York: Copper, coffee, waste materials, metal and alloys, crude rubber, agricultural products, and lead 736
and zinc. The volume of each of the commodities named exceeded 10,000 tons.

The protestant railroads stress the superiority of the facilities available and the services provided at New York, as compared with the southern tier ports, and which they contend increase the value of the transportation service at New York to such an extent as to require differentials much greater than the present ones. The potency of these factors is emphasized particularly as it bears upon the validity of the claim of competitive need, relied upon by the respondents. The protestants and their supporting port interests take the position that as the southern tier ports afford no service advantages comparable to those provided by New York, their only competitive appeal is in the rate differential, and if that were lost there would soon be no incentive to use those ports.

The principal, and in some instances the only, reason given by one of the respondents' traffic officers, and by the shippers and receivers in the affected territory who testified in support of equalization, for routing traffic through the southern tier ports rather than the port of New York is the lower freight rates which the differentials provide. A large exporter of grain operating elevators at Albany and Norfolk, who testified in support of the respondents,

attributed the much greater volume of grain exported through Baltimore and the increased volume through Norfolk to their freight-rate advantage, as by far the largest single factor.

Some of these shippers who use the southern tier ports stress that rate equalization would provide them relief from congestion and embargoes at those ports, excessive demurrage charges, delays in unloading, and difficulty in scheduling rapid transportation and maintaining an even flow of traffic from their plants. There is no evidence that such situations have obtained or are now present at the southern tier ports. To the extent that they may occur, particularly where they result in inferior service at those ports, they would supply an added incentive, in the event of rate equalization, for a shift in tonnage to the northern tier ports, especially New York.

Baltimore interests contend that with rate parity that port would lose a large part of its general cargo. They rely on the detailed evidence of New York's superior steamship service and port services and facilities, which the record shows attract substantial traffic through New York en route to or from areas in which the southern tier ports are located, although the rail rates to New York in most instances exceed those to the southern tier ports. As to bulk commodities, Baltimore contends that the effect of the loss of the differential would be less immediate but equally certain. Its excellent facilities for handling this traffic were developed primarily by the railroads in reliance upon their use by exporters of grain and importers of ore, because of the saving in inland freight. As bulk commodities, because of their low value, are peculiarly sensitive to transportation cost, the differential has greater influence on their movement than on general cargo. This movement is generally in regularly scheduled vessels, at equalized ocean rates, and in shipper-owned vessels. The variety of general cargo concentrated in New York has drawn such vessels to that port. With further concentration of such cargo resulting from rate parity, the steamship lines desiring diversified cargoes would use their in-

fluence to attract more bulk cargo to provide balanced ladings [sic] at that port, with resulting diversion of bulk cargo on which Baltimore is heavily dependent.

About 90 percent of Baltimore's waterborne commerce consists of bulk commodities such as ores, petroleum, raw sugar, gypsum rock, and grain. It is interested in increasing its volume of general cargo so that it may attract more liner-type vessels, and provide a better balance of tonnage and greater revenue for the port. The general cargo moving by rail to and from the affected territory, which in 1955 aggregated about 1.1 million tons, was only about one-fourth of the domestic and foreign general cargo passing through the port. It has had difficulty even with a rate advantage in building up its foreign trade of this type. It fears that the volume would diminish, with resulting curtailment of steamship service, if New York were accorded a parity of rates with the southern tier ports. If much of this traffic were lost because of rate parity, and the St. Lawrence Seaway should attract a substantial part of its bulk cargo tonnage, it fears that its port revenues and employment in the port area would suffer. Although the competition of the seaway, especially for export grain, is relied upon by the respondents and the authority to support equalization, Baltimore emphasizes that since bulk commodities are estimated to provide 80 percent of the seaway traffic, New York, predominantly a general-cargo port, would be affected much less than Baltimore which is primarily a bulk-cargo port.

Shipper evidence presented by the protestants shows a decided preference for the port of New York. A number of manufacturers of a variety of products at points in Maryland in or near Baltimore make a substantial portion of their export shipments through New York, in some instances as high as 95 percent. Most of these move by truck at rates as much as 79 cents higher than to Baltimore, generally at the direction of the foreign purchaser or a foreign freight forwarder at New York whom he designates, of brokers at New York, of the domestic corporations who consolidate the shipments at the port for move-

ment to their foreign bases, or of the U.S. Government when it controls the transportation.

A freight forwarder at Baltimore who specializes in moving export shipments, providing a carloading service from differential territory, and who is the only forwarder loading regularly scheduled export cars to Baltimore, loads such cars at Chicago, Indianapolis, and three Ohio cities. Similar service is provided by other forwarders to other ports, including New York and New Orleans. During the test year, 5,242 tons, or slightly more than 10 percent of the volume to New York, moved to Baltimore. When solicited for this traffic, shippers give numerous reasons for preferring New York, the chief of which is the advantage of more frequent direct sailings to more foreign ports, or the directions of their customers who maintain export offices in New York from which they can best control the movement of the freight and its consolidation at the port. Without the saving which the present rates to Baltimore afford the shipper, it would be impossible to obtain sufficient traffic to load cars for Baltimore, and the forwarder fears that it would be compelled to obtain authority to operate to New York or retire from the business.

Truckload rates from the affected territory on numerous articles exported or imported through North Atlantic ports do not reflect recognized differentials as do the rail rates. The differences in such rates to or from these ports are greater than the differentials in the corresponding rail rates. For example, truckload rates on brass or copper ingots to Cleveland are 85 cents from Baltimore, 88 cents from Philadelphia, and 93 cents from New York.

To show that New York's competitive position is far superior to that of Hampton Roads, a study was made by the Chesapeake & Ohio for the year ended June 30, 1957, which disclosed that substantial tonnages from the affected territory moved to New York notwithstanding the lower rates to the southern tier ports. For example, of 5,870 carloads originated by the Chesapeake & Ohio in that territory during this period and exported either through Hamp-

ton Roads or New York, 4,654 carloads were exported through New York. Thus, notwithstanding its 3-cent advantage this carrier was able to hold only one out of five carloads which it originated. In the same period it handled for export through Hampton Roads only 661 carloads originated by the New York Central and 40 carloads originated by the Erie, which were turned over to it by those respondents.

To ascertain the effect of the 3-cent differential, a study was made of manufactured iron and steel traffic for export from the Pittsburgh district, from which the rates to New York and Hampton Roads are the same. During August and October 1955 and April, May, and June, 1956, 178,241 739
tons were moved from that district through New York by five respondents and only 545 tons moved through Newport News. During the test year the movement from the affected territory to New York of this commodity aggregated 580,073 tons, or over 100 times the 5,416 tons handled through Hampton Roads and over 60 percent more than through Baltimore.

A parity of rates to Hampton Roads and New York also obtains on export traffic from the Province of Ontario, Canada, served by the Chesapeake & Ohio and the New York Central. In the year ended with June 1957, only 14 carloads moved through Hampton Roads from origins on the Chesapeake & Ohio in that Province, as compared with 553 carloads from those origins to New York. The Chesapeake & Ohio was unable to attract a single carload originated by the New York Central in that territory for movement to Newport News.

A meatpacker operating plants at Madison, Wis., and Davenport, Iowa, exports lard, pork, and pork products over routes through Chicago and the North Atlantic ports in competition with other slaughterers at Chicago, St. Louis, East St. Louis, and Milwaukee. No reductions are proposed in the rates from Madison or Davenport. As it must absorb the difference in rates from its plants over those from Chicago in making such export sales, it objects

to the substantial increase in the rate spreads, in some instances more than double the present, which would result from the proposed reductions from Chicago. It contends that undue prejudice to it would result, and states that under the proposed adjustment its only alternative would be to move more of its export traffic through Gulf ports.

Discussions and Conclusions

The port rates proposed to be reduced are part of a rate structure established by voluntary agreement of the eastern railroads more than 80 years ago. It was the purpose of that structure, as expressed in *In the Matter of Differential Rates, supra*, pages 13 and 62, that "these ports shall all be kept open * * * for export business upon such terms that each one may fairly complete for it." This purpose was reaffirmed in *Albany Port District Comm. v. Ahnapee & W. Ry. Co., supra*, at page 162, from which we have previously quoted herein. As was there said in prescribing reasonable and nonprejudicial port rates to and from Albany, this adjustment was not a loose aggregation of separately established rates, but a single entity composed of interrelated rates bound together by the port differentials. To the extent that these differentials are effective in controlling the movement of traffic through particular ports, their impact is registered in the tangible evidence of the
740 tonnage data. But as such data also reflect the influence of numerous other factors, including the rail service, the various port services, and the ocean service beyond, which may counteract or supplement the effect of the differentials, the complexity inherent in measuring or evaluating that impact is apparent. However, it is equally apparent that as the influence of all these factors has been registered, a change in the differentials could be expected to cause a shift in a substantial volume of the traffic.

The primary purpose of the proposed adjustment, as the respondents and the principal northern tier port interests emphasize, is to reestablish the equality of through ocean-rail charges which existed prior to the ocean-rate equalization in 1935. The respondents claim that, as a result of

such equalization, the present unequal through charges have caused traffic diversion from the northern tier ports. However, the volume of foreign traffic having its origin or destination in the affected territory which those ports attracted prior to the equalization of the ocean rates is not revealed. Consequently, we are unable to find support for the assertion that the disparity in through charges thus created has diverted traffic from the northern tier ports, to the disadvantage of the respondents.

Some of these ports have at various times sought to alter the differentials, but prior to this proceeding no carrier or group of carriers has done so. While circumstances warranting or requiring some modification of the present adjustment may arise, the burden of establishing the need for such a change rests upon the proponents thereof. Of controlling importance in this connection are the provisions of sections 1 and 3(1) relating to reasonableness and to undue preference or advantage of ports or port districts. Also, section 15a(2), among other things, requires us to consider the effect of rates on the movement of traffic, and the national transportation policy stresses the importance of maintaining a national transportation system adequate for commerce and the national defense.

In *Export Grain from Buffalo to New York*, *supra*, we found "abundant evidence of the dominant position" of the southern tier ports and a clear indication that New York, particularly, had suffered a substantial loss of tonnage in its competition for the ex-lake grain traffic. By contrast, the claims made here by the respondents and the northern tier ports, of diminishing volume of their subject traffic since equalization of the ocean rates was effected, and that these traffic losses are attributable to the differentials, are not supported by impressive evidence. As to Boston, which argues that its port and the respondents which serve it have been handicapped since equalization of the ocean rates and seeks to restore the competitive situation which the differential adjustment was designed to create, the evidence of supporting data is even more meager than for New York.

741 The present differentials are smaller than they would be if allowed to be set by competitive factors, and also much smaller, relatively, than when initially established. As hereinbefore mentioned, protestant railroads have filed a counter proposal, in the event that the respondents' rates are found lawful; they propose to reduce their rates between southern tier ports and the same interior territory by the same amounts as proposed by the respondents. The greater distance of the northern tier ports from the affected territory, and the higher costs of service to and from those ports, are firmly established. Thus, approval of respondents' proposed rates would require alternate approval of protestants' proposed rates. This might result in the rates gravitating to their lowest possible level and in a needless dissipation of carrier revenues. We have been given the power to fix rates, among other reasons, for the purpose of preventing destructive competition and promoting the financial stability of the regulated carriers. Failure to observe our obligations in the exercise of that power would find us remiss in our duties. The present differentials have long served to retain a reasonable competitive relationship between the principal port groups and should be maintained.

The evidence upon which the respondents rely is not convincing that their proposed rates are necessary to afford them and the northern tier ports, as a group, the opportunity to compete for a larger proportionate share of the traffic here considered. On the contrary, the record is clear that New York continues to attract more of the highly desirable general-cargo tonnage so vital to its port economy than all of the other North Atlantic ports combined; that to obtain a volume of traffic which will support a much lower level of port activity and range of shipping services than New York, the southern tier ports have been depending heavily on bulk-cargo tonnage; and that, considering the volume and character of the traffic disclosed by the traffic study, and other evidence of circumstances which induce or deter the flow of the subject traffic, undue diversion from those ports to New York, at least of most types of that traffic, would result from the proposed equalization.

The comprehensive showing in that study strongly refutes the claim of the respondents and their supporting port interests that such equalization is required to enable them to meet the competition of the southern tier ports and to effect a reasonable and nonpreferential rate relationship as between the opposing port groups.

We find that the respondents' proposed rates are not shown to be reasonably related to the present rates on like traffic between the same interior points and the southern tier ports, and that the proposed rates would result in undue preference of and advantage to the northern tier ports as a 742
group and in undue prejudice and disadvantage to the southern tier ports. We further find that the proposed rates of the protestant railroads are not shown to be just and reasonable. An order will be entered requiring cancellation of the suspended schedules, denying the fourth-section application, and discontinuing the proceedings.

COMMISSIONER FREAS, whom COMMISSIONER MCPHERSON joins, concurring in the result:

I agree that the statutory burden of proving the proposed rates just and reasonable and of justifying the sought fourth-section departure has not been met by any of the proponents. It follows that the proposed rates should therefore be ordered canceled. This, however, is the extent of the finding the record, in my opinion, justified and all that is necessary to the disposition of the proceeding.

COMMISSIONER WEBB, dissenting:

For 83 years railroads have been permitted to establish inland rates which equalize rail-ocean and ocean-rail rates on export and import traffic moving through the North Atlantic ports between central territory and foreign ports. That policy of equalization, by preventing the growth of monopolies based on geographical advantages, has benefited railroads, shippers, ports, steamship operators, and the general public by insuring a free flow of commerce through as wide a range of ports as practicable. A policy of rate-making which has served so well the needs of foreign

commerce should not be repudiated except for compelling reasons.

From 1877 to 1935 rail rates to and from New York at levels generally 2 or 3 cents per 100 pounds higher than to and from the southern tier ports were required by the policy of rate equalization. The inland rate differentials compensated for generally higher ocean rates to and from the southern tier ports. Ocean rates were not fully equalized to all the North Atlantic ports until 1935. Beginning in 1935, therefore, the higher rail rates to and from New York and Boston, which the respondent carriers serving those ports seek to eliminate in this proceeding, were either outmoded or the then 58 year old policy of rate equality had suddenly become unsound.

After 1935, the respondents took no immediate action to remove their outmoded rate handicap. However during World War II and in the preceding period of aid to our prospective allies, a large volume of traffic moved through New York in spite of that port's rate disadvantage simply because New York was the only port then capable of handling the volume of emergency shipments involved. An attempt by the Port of New York authority to eliminate the
743 rail differential on ex-lake grain was defeated by the Commission. *Port of New York Authority v. Baltimore & O. R. Co.*, 248 I.C.C. 165 (1941). Rail-ocean and ocean-rail rate parity to and from the North Atlantic ports has generally been approved, however, in cases where parity was proposed by the carriers involved. Cf. *Export Grain from Buffalo to New York*, 278 I.C.C. 31, 292 I.C.C. 647 (1954); *Iron Ore from Eastern Ports to C.F.A. Points*, 291 I.C.C. 195 (1956) (reopened and now pending); *Coal from Clearfield Group to Philadelphia for Export*, 308 I.C.C. 425 (1959).

There is a fundamental difference between action by the Commission or by port interests to compel equalization and voluntary action by carriers to establish it. See *New York Central R. Co. v. United States*, 99 F. Supp. 394, 398 (1951), affirmed per curiam, *Interstate Commerce Commission v. New York Central R. Co.*, 342 U.S. 890. The

Commission has often recognized that carriers may make voluntary rate adjustments which the Commission could not require. This is not a complaint filed by port interests under section 3(1) of the act. The respondent carriers are merely seeking to reinstate a ratemaking policy voluntarily established 83 years ago — a policy which lapsed when ocean rates were equalized around 1935 without the corresponding adjustment of rail rates for which Commission approval is now sought. The burden of proving the lawfulness of a proposal which conforms to the traditional rule of rate equalization should be lighter than the burden of proof required to sustain a complaint which seeks to carve out an exception to the rule.

As pointed out by the Commission in *Cham. of Com. of State of New York v. N.Y.C. & H.R.R. Co.*, 24 I.C.C. 55 (at p. 69):

> The original agreement [of 1877] for differentials was based on the fact that the ocean rates for freights to and from foreign markets were less from and to New York than from and to the other ports, and the effort was to equalize the entire through charge via the several ports.

In 1882 the Thurman Advisory Commission was created by some of the railroads involved to investigate and report upon the differences in rates that should exist among the several Atlantic ports. The reasons given by the Advisory Commission for continuing the policy of equalization are just as valid today as they were three-quarters of a century ago. The Advisory Commission found that equalization aids the American producer by maximizing the number of buyers, carriers, and ports interested in his product; that, as to routes which are equally favorable, the bulk of the traffic will tend to move by the "through route" offering the lowest rate from interior points to European ports; that fixing rates upon the basis of distance from the port could not be achieved "except by subordinating competition altogether" to the distance principle; and that fixing differentials on the basis of relative cost of service would build

up some cities and transportation companies upon the ruin of others. Accordingly, the Thurman Advisory Commission concluded that distance and cost of service considerations "are subordinate to the great principle which compels the carriers of property competing between the same points and offering equal facilities to their customers to make the same rates."

The "great principle" of rate equalization has proved to be as sound in practice as the Thurman Advisory Commission found it to be in theory. Shippers have had additional ports available in time of strike or congestion. Because of the flexibility provided by rate equalization, shippers have been able to avoid delays in unloading, to minimize demurrage, and to schedule export and import shipments without bunching of cars at origin or destination. Railroads and ports have competed for traffic on the basis of service instead of monopolizing portions of the traffic by reason of cost and distance advantages. Operators of ocean vessels have been able to put into any North Atlantic port knowing that the total cost of transportation to the consignee would be the same.

Another advantage of rate equalization is that the Interstate Commerce Commission has less occasion to apportion traffic among the ports involved. Where, as here, the required rate differential is not justified solely on distance or cost of service considerations, apportionment of traffic is inherent in the fixing of the differential. For example, if the rate handicap against New York and the other northern tier ports were increased by 50 percent even less traffic would move through those ports, whereas a reduction of the differential by 50 percent would increase their tonnage. In forcing continuance of the rate handicap, the majority has necessarily determined that each of the carriers and ports involved is presently enjoying a fair share of the available traffic.

In allocating traffic between ports and carriers the Commission's expertise should not lightly be presumed. Under certain circumstances, apportionment of traffic is required

by statute, but unless the duty of determining fair shares is unavoidable, it is far better to let the flow of traffic be determined in the transportation marketplace. If the policy of rate equalization were followed in this proceeding, the Commission would not be required to decide, *sub silentio*, how much of what kind of traffic should move through the various ports.

Adherence to the great principle of rate equalization requires disapproval of the retaliatory reductions by the carriers serving the ports of Philadelphia, Baltimore, and Hampton Roads, their cost and distance advantages to the contrary notwithstanding. If the dire predictions of these carriers and ports should begin to materialize in the wake 745
of rate equalization, a remedy is provided by section 3(1) of the act. In acting upon such a complaint, the Commission would be obliged to determine what volume of traffic is required to sustain the life of the port. However, no such determination should be made on this record or on any other record developed prior to the movement of traffic under rate parity. Rate equalization is the rule. Exceptions to the rule should not be prescribed on the basis of conjectural harm.

Even if it were proper to apportion traffic in this proceeding, the allocation effected by the majority seems inequitable. As shown by appendix F (which does not include substantial tonnages of export coal and import iron ore moving through the southern tier ports), rail exports from the affected territory through New York amounted to only 29.3 percent of the total and imports through New York to the affected territory amounted to only 23.1 percent of the total. It is no answer to say that New York continues to handle over 60 percent of the so-called "highly desirable general-cargo tonnage." The report recognizes that the exportation and importation of bulk commodities is increasing while "the movement of United States manufactures to foreign markets has been steadily declining." Moreover, the majority recognizes that the general cargo which moves predominantly through the port of New York is the most expensive type of traffic to handle and, in fact,

that such traffic provides a return which is only barely compensatory.

These conclusions appear to restrict New York and the other northern tier ports to a shrinking class of traffic which is the most expensive to handle. Bulk commodities do not move freely against a rate differential. Railroads are volume carriers. To deny the respondents an opportunity to participate in the movement of bulk cargoes is a denial of their most important inherent advantage. Furthermore, any prospect of relief in the future seems remote. If, as the majority finds, the proposed adjustment would unduly prefer Boston, Portland, and Albany, which collectively handle only 6.9 percent of the involved exports and only 1.1 percent of the affected imports, the rate handicap of New York must be regarded as relatively permanent in nature.

The majority also finds that the reduction proposed by the respondents to achieve rate equalization has not been shown to be compensatory. The reductions are minimal, amounting to about one-tenth of a cent in ton-mile revenue. Since publication, the proposed equalization rates were subjected not only to authorized general increases to cover increased costs, but also to an additional charge of 6 cents per 100 pounds on waterborne traffic approved in Ex Parte No. 212, 304 I.C.C. 289 (1958). To require the respondents to submit a cost study embracing the whole range of export-import traffic from and to all the points involved in this proceeding would impose upon them a difficult, if not impossible, assignment.

Certain protestant rail lines which serve the port of New York attempted by a study of revenues on representative shipments to show that the proposed rates were not compensatory. This study did not include traffic handled by the least expensive means, that is, traffic transferred direct between car and ship and not handled in lighterage, car float, or trucking in lieu of lighterage service. In September 1956, respondent New York Central transferred 30 percent of its traffic at New York direct from car to ship. If the cost

evidence had included "heavy-moving bulk commodities" transferred directly between ship and shore and which the respondents hope to attract by rate equalization, it is reasonable to assume that the showing of compensativity would be enhanced rather than diminished.

After restating protestants' cost figures and without making any allowance for any increase in bulk commodity traffic, the majority reaches the following conclusion:

> After restatement of the protestants' costs to reflect port costs computed on that basis, and giving effect to adjustments in other disputed but less important items of those costs, application of the resulting costs to the New York traffic indicates that the revenue from the proposed rates would equal or exceed by a very small margin the estimated out-of-pocket costs. However, a presentation of costs adequate to determine whether the proposed rates would be reasonably compensatory should embrace all types of traffic which those rates are expected to attract, and should reflect the costs of the specific methods by which they would be handled. It may be that other traffic would be forced to absorb a larger portion of the constant costs in order to maintain a national transportation system conforming to the ultimate objectives of the national transportation policy.

Included in the estimated out-of-pocket costs is a return of 4 percent on investment after Federal income taxes. None of the respondent railroads serving the port of New York had an average rate of return on investment of 4 percent for the years 1946-1957, inclusive. The record shows that for 1957 respondent Lehigh Valley had a return of 0.44 percent and respondent New Haven a return of 0.08 percent. Annual reports filed with the Interstate Commerce Commission show that respondent New York Central's rate of return on investment in 1958 was only 0.61 percent and that the New Haven failed to make any return at all on its investment in 1958 and 1959.

It is clear, therefore, that the proposed rates which are found to "equal or exceed by a small margin" the estimated out-of-pocket costs (which include a 4 percent return on investment after Federal income taxes) would not burden domestic traffic. Rather, the record shows that the proposed rates would make a far greater contribution to the
747 total transportation burden than the rates applicable to other traffic.

Approval of the proposed rates would be consonant with the Commission's duty under the national transportation policy to "foster sound economic conditions in transportation and among the several carriers." The precarious financial condition of some of the respondent carriers is a matter of common knowledge. The principal lines serving Philadelphia and Baltimore also serve New York and they would, therefore, participate to some extent in the handling of increased tonnage through the port of New York. The relative prosperity of the railroads serving Hampton Roads is well known.

By inflexible adherence to cost accounting theory, rates yielding a 4-percent return on investment after Federal income taxes can be found to be inadequately compensatory to carriers which have not enjoyed such a return for many years. Impressive support for such a conclusion may be found among practitioners of the science of cost accounting. It is their view that a return on investment and taxes other than payroll should be included in railroad out-of-pocket costs because, over a long span of time, these items of expense are variable in terms of traffic volume. But even if the theoretical validity of this approach is conceded, the Commission should recognize that the survival or demise of some of the respondent carriers will be determined over a much shorter period of time than that posited by conventional rail cost analysis.

I would approve the proposed reduced rates to the extent indicated above and grant fourth-section relief.

APPENDIX A

Comparison of waterborne foreign commerce through U. S. and North Atlantic ports, with that through New York

[Millions of net tons]

	1935	Percent of United States	1946	Percent of United States	1955	Percent of United States
Imports	38.7		52.1		153	
Exports	43.0		96.8		118.1	
Total, United States	81.7		148.9		271.1	
North Atlantic, total	35.0	42.8	69.9	46.9	158.1	58.3
New York, total	17.4	21.2	22.8	15.3	38.9	14.4
New York, percent of North Atlantic	49.7		32.6		24.6	
Imports (excluding petroleum and ores)	26.5		28.4		33.8	
Exports (excluding coal and grain)	33.3		51.2		52.4	
Total, United States	59.8	100.0	79.6	100.0	86.2	100.0
North Atlantic, total	23.8	40.0	24.5	30.8	29.2	33.9
New York, total	12.8	21.3	14.4	18.1	16.6	19.3
New York, percent of North Atlantic	53.4		58.7		[1] 56.9	

[1] Percentage of North Atlantic general-cargo exports and imports increased from 58.7 percent in 1955 to 59.1 percent in 1956.

Value of foreign trade

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(Millions of dollars)

Year	Exports		Imports	
	New York[2]	Baltimore	New York	Baltimore
1935	790	36	1,033	36
1945	4,020	499	4,477	118
1955	4,005	577	4,293	379

APPENDIX B

Oceanborne general cargo, 1956

[Gross tons (thousands)]

	Exports	Imports
North Atlantic:		
New York	6,397	6,495
Other North Atlantic	4,007	4,918
Total	10,404	11,413
South Atlantic:		
North Carolina	219	82
South Carolina	432	241
Georgia	443	365
Florida	995	1,360
Total	2,088	2,048
Gulf:		
Mobile	602	355
New Orleans	3,308	2,693
Sabine	885	87
Galveston	2,651	1,158
Laredo	409	30
Total	7,855	4,323
Pacific coast	4,870	3,865
Other	1,770	1,101
Total, United States	26,987	22,750

Exports, carloads (except coal, coke, and grain)

Port	1939	1956	Percent 1956 of 1939
Boston	7,679	10,673	139
New York	127,020	184,543	145
Philadelphia	46,447	23,857	135
Baltimore	23,322	40,380	173
Hampton Roads	24,949	37,539	150
(1) North Atlantic, total	203,432	303,149	149
(2) South Atlantic and Gulf, total	171,410	289,087	169
Grand total	374,842	592,236	158

APPENDIX C

[Millions of net tons]

	U.S. ports tons	North Atlantic ports tons	New York		North Atlantic ports			
					Northern tier		Southern tier	
			Tons	Percent of North Atlantic	Tons	Percent of North Atlantic	Tons	Percent of North Atlantic
EXPORTS, EXCLUDING COAL AND GRAIN								
1923	(1)	12.9	9.2	72	9.5	74	3.4	26
1946	51.2	14.5	8.5	59	8.9	61	5.6	39
1955	52.4	14.1	8.2	58	8.8	62	5.3	38
IMPORTS, EXCLUDING PETROLEUM AND IRON ORE								
1923	(2)	15.4	8.8	57	11.1	72	4.3	28
1946	28.4	12.8	6.2	49	7.4	58	5.3	42
1955	33.8	20.3	9.4	46	11.2	55	9.0	45

[1] 42.3 million tons in 1930.
[2] 26.6 million tons in 1930.

Imports, North Atlantic ports, net tons (exclusive of petroleum and ores)

Port	1955	1946
Boston	1,408,359	1,012,204
New York	8,434,065	5,890,592
Philadelphia	2,651,018	1,737,081
Baltimore	1,648,071	814,316
Hampton Roads	1,142,812	638,596
North Atlantic		
Total	15,660,246	10,265,704

Exports, North Atlantic ports, net tons (exclusive of coal, coke, and grain)

Port	1955	1946
Boston	435,118	191,307
New York	8,178,436	8,507,145
Philadelphia	1,804,956	2,460,268
Baltimore	2,147,798	1,812,643
Hampton Roads	794,288	1,174,030
North Atlantic		
Total	13,544,621	14,273,485

APPENDIX D

(Millions of gross tons)

Year	United States		New York Customs District		
	Total	General cargo	Total	General cargo	Percent of U.S. general cargo
OCEANBORNE EXPORTS					
1923	40.7	21.7	11.1	7.9	36.3
1946	64.2	26.2	11.9	9.9	37.7
1947	91.1	28.8	14.3	10.9	38.0
1948	66.8	22.0	11.4	8.1	36.8
1949	58.8	20.8	9.1	7.0	33.7
1950	39.1	17.0	6.6	5.1	29.9
1951	87.3	20.0	9.7	6.3	31.3
1952	76.1	18.1	7.8	5.7	31.7
1953	57.1	15.3	6.6	4.8	31.1
1954	57.0	18.4	6.6	4.9	26.8
1955	84.6	23.8	8.4	6.4	26.8
1956	[1] 113.0	27.0	8.7	6.4	23.7
OCEANBORNE IMPORTS					
1923	38.4	17.8	11.6	8.0	45.0
1946	44.2	13.6	13.7	5.2	38.2
1947	51.2	14.3	14.5	5.1	35.3
1948	60.8	16.3	17.8	6.2	38.2
1949	58.9	16.7	18.3	5.8	34.6
1950	86.1	21.4	23.0	7.6	35.5
1951	91.0	20.7	22.8	7.1	34.5
1952	97.0	19.5	25.1	6.9	35.6
1953	108.0	21.2	26.2	7.3	34.4
1954	110.7	19.4	25.4	5.8	30.0
1955	130.2	22.3	27.3	6.4	28.6
1956	[2] 146.8	22.8	27.5	6.5	28.5

[1] The increase in total exports of about 72,000,000 tons since 1923 distributed roughly was as follows (in millions of tons): Coal, 42; grain, 14; tanker cargo (petroleum, coal tar products, and molasses), 4; other minerals (sulphur, phosphate, and iron ore), 4; foreign aid, 3; and general cargo, 5.

[2] The increase in total U.S. imports of 108,000,000 tons since 1923 consisted of the following (in millions of tons): Tanker cargo (mainly residual fuel oil), 66; bulk ores (iron, manganese, chrome, ilmenite, bauxite, copper, and lead), 34; other minerals (clays, gypsum, and nitrates), 3; and general cargo, 5.

APPENDIX E

Rail transportation of foreign commerce between U.S. North Atlantic ports and affected territory

August 1955–July 1956

Imports	Northern tier		Southern tier	
	Net tons	Percent	Net tons	Percent
Products of agriculture	225,626	33.3	84,268	4.0
Animals and products	19,597	2.9	4,873	.3
Products of mines[1]	41,331	6.1	1,622,761	76.5
Products of forests	13,100	1.9	41,570	1.9
Manufactures and miscellaneous	376,672	55.6	368,350	17.3
Forwarder traffic	130	.2		
Total carload traffic	676,456	100.0	2,121,822	100.0
Percent of North Atlantic	[2] 24.2 (52.9)		[2] 75.8 (47.1)	

[1] Exclusive of petroleum and iron ore and concentrates.
[2] Exclusive of bulk ores.

Exports	Northern tier		Southern tier	
	Net tons	Percent	Net tons	Percent
Products of agriculture	868,000	29.3	3,993,051	59.5
Animals and products	124,182	4.2	87,524	2.6
Products of mines[1]	4,582	.1	19,213	.3
Products of forests	3,310	.1	2,605	.1
Manufactures and miscellaneous	1,913,481	64.6	1,090,690	36.8
Forwarder traffic	50,599	1.7	5,242	.7
Total carload traffic	2,964,154	100.0	5,207,325	100.0
Percent of North Atlantic	[2] 36.3 (62.7)		[2] 63.7 (37.3)	

[1] Exclusive of coal.
[2] Exclusive of grain.

APPENDIX F

Rail transportation of exports from affected territory (1955-56)

To—	Total		Grain		Other traffic	
	Net tons	Percent of North Atlantic	Net tons	Percent of North Atlantic	Net tons	Percent of North Atlantic
New York						
Respondents	1,642,349		154,125		1,488,224	
Protestants	750,696		49,869		700,827	
	2,393,045	29.3	203,994	4.4	2,189,051	62.7
Boston	361,772	4.4	358,516	7.7	3,256	.1
Portland	68,192	.8	68,192	1.5	None	
Albany	141,145	1.7	141,000	3.0	145	0
Total, northern tier	2,964,154	36.3	771,702	16.6	2,192,452	62.8
Baltimore	3,303,499	40.4	2,339,309	50.0	964,190	27.6
Philadelphia	854,809	10.6	705,578	15.1	149,231	4.3
Hampton Roads	1,049,017	12.9	859,191	18.4	189,826	5.4
Total, southern tier	5,207,325	63.7	3,904,678	83.5	1,303,247	37.3
		100.0		100.0		100.0

Rail transportation of imports to affected territory (1955-56)

From—	Total		Bulk ores[1]		Other traffic	
	Net tons	Percent of North Atlantic	Net tons	Percent of North Atlantic	Net tons	Percent of North Atlantic
New York:						
Respondents	391,979		27,790		364,189	
Protestants	253,813		2,182		251,631	
	645,792	23.1	29,972	1.9	615,820	50.4
Boston	17,739	.64	None		17,739	1.5
Portland	12,382	.4	None		12,382	1.0
Albany	543	.1	None		543	
Total, northern tier	676,456	24.2	29,972	1.9	646,484	52.9
Baltimore	1,644,844	58.8	1,349,946	85.1	294,898	24.1
Philadelphia	184,759	6.6	59,490	3.8	125,269	10.25
Hampton Roads	292,219	10.4	136,046	8.6	156,173	12.8
Total, southern tier	2,121,822	75.8	1,545,482	98.1	576,340	47.1
		100.0		100.0		100.0

[1] Other than iron ore and concentrates.

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 6615[1]

EQUALIZATION OF RATES AT NORTH ATLANTIC PORTS

Decided June 15, 1961

Upon reconsideration:

1. Prior findings that proposed reduced class and commodity rates on export and import traffic between interior points in differential territory, on the one hand, and New York and Albany, N.Y., Boston, Mass., and Portland, Maine, on the other, are not shown to be reasonably related to the present rates on like traffic to and from Baltimore, Md., Philadelphia, Pa., and the Hampton Roads (Va.) ports, and would cause undue prejudice and preference as between the ports named, amplified and affirmed.

2. Other findings in prior report, 311 I.C.C. 689, affirmed.

Appearances as shown in prior report.

REPORT OF THE COMMISSION ON RECONSIDERATION.

GOFF, *Commissioner*:

In the prior report, 311 I.C.C. 689, we found that schedules by which the respondent railroads proposed rate reductions and thus sought to equalize the rates[2] on export and import traffic between the ports of New York, N.Y., Boston, Mass., Portland, Maine, and Albany, N.Y., hereinafter called northern tier ports, and interior points in differential territory, described in that report, with the corresponding rates between Baltimore, Md., and the same interior points, were

[1] This report embraces also fourth-section application No. 32204, Import and Export Rates from and to North Atlantic Ports.

[2] Rates and differences in rates are stated per 100 pounds.

not shown to be reasonably related to the present rates on like traffic between the southern tier ports (Baltimore, Philadelphia, Pa., and Hampton Roads, Va.) served by competing (protestant) railroads, and would cause undue preference of the ports first named, as a group, and undue prejudice to the southern tier ports. We found also that schedules by which the protestant railroads proposed, if the foregoing rates should be found lawful, to reduce their rates between the southern tier ports and the interior territory, and thus restore the present relationships, were not shown to be just and reasonable. Some of these railroads serve New York, as well as Philadelphia and Baltimore. By our order of December 5, 1960, the schedules were ordered canceled and the fourth-section application in the embraced proceeding was denied.

Upon further consideration of the prior decision, and of 186
the record herein, on April 11, 1961, we reopened the proceedings for reconsideration, on the record as made, of the lawfulness of the proposed rates separately and independently on traffic to and from each of the northern tier ports.

Only the principal facts recited in the prior report will be repeated herein. The evidence includes a vast amount of statistical data. Much of these relate to tonnage moving through each port and, collectively, through the northern and southern tier ports. The most important of these data are summarized in the appendices to the prior report, to which reference will herein be made.

The commodities embraced in these proceedings when moving by water are of two types, called bulk cargo and general cargo. The bulk cargo consists almost entirely of export grain and import ores, other than iron ore.[3] The general cargo includes principally manufactured and semi-manufactured articles of relatively high value, which gen-

[3] Other much more important bulk commodities are export coal and import iron ore, and petroleum. Of the petroleum which moves through North Atlantic ports, little or none moves to the affected territory.

erally provide the more profitable "top loading" for ships and the greater employment and revenue per ton for the port community.

The present rates on import traffic are the same from New York, Boston, and Portland, except as noted below. Those from Philadelphia and Baltimore are 2 cents and 3 cents, respectively, under the rates from New York, except that on classes 1 and 2 they are 6 cents from Philadelphia and 8 cents from Baltimore under New York. Import rates from Portland, applicable over routes through Canada only, are the same as those from Baltimore, and such rates and routes also are in effect from Boston.

On export traffic, again New York, Boston, and Portland have the same rates. The rates to Philadelphia are 2 cents less and to Baltimore 3 cents less than those to New York, except that on export grain the rates to Philadelphia are 0.5 cent under and those to Baltimore 1.5 cents under New York, and on flour they are, respectively, 1 and 2 cents under the New York rates.

The Hampton Roads rates are the same as those to and from Baltimore only from and to points in differential territory west of a north-south line in central Ohio described in the prior report.

Rates to and from Albany are the same as those to and from Philadelphia, generally 2 cents under New York. The respondents proposed rates for Albany on the Baltimore basis.

As stated, our prior findings were directed to the northern tier ports as a group. This was done to accord with the
87 group proposal made by the respondents. That proposal, in which the respondents serving Boston joined, specifically purported to equalize their rates with the rates to and from Baltimore. The general brief of the respondents, in which the Boston respondents joined, stated their position as a unit, without reservation, and dealt with much of the evidence as such. The 16 findings which they requested made no mention of any individual port. This brief con-

tains numerous references to their proposal as a "group adjustment.". For example, at page 60 of their argument the respondents refer to the fact that the instant "group adjustment" was initiated in an effort to remove the differential as was done with respect to ex-lake grain. Moreover, their requested finding 4 was as follows:

> Equalized through charges are a competitive necessity in the proposed group rate adjustment.

The New Haven and Boston & Maine, hereinafter called the Boston respondents, arguing that there was no need in this proceeding for cost evidence and that in a "competitive situation" relative distances must be ignored, in their supplemental brief stated that the proceeding "involves a broad group adjustment," and that the subject traffic "would move under a group adjustment."

However, the Boston respondents and particularly the Boston port interests in their exceptions, urge that, regardless of the conclusion reached as to New York, the reduced rates to and from Boston be found lawful. Upon further consideration of the position thus taken by the Boston interests and of our prior decision herein, we reopened these proceedings for consideration of the lawfulness of the proposed rates separately and independently on traffic to and from each of the northern tier ports. Facts and contentions stated in the prior report will be restated only to the extent necessary for a clear understanding of the issues.

In general. — Differentials of substantially the same amount as those now prevailing were initially agreed upon in 1877 as a compromise by the lines which served New York, on the one hand, and the Philadelphia and Baltimore railroads, on the other, following about a decade of rate instability in which rate wars were the outgrowth of repeated failures of the port railroads to agree on port rate relationships. Comparative rail distances between differential territory and Baltimore, Philadelphia, and New York were an important consideration in the compromise.

the Baltimore lines having insisted on greater rate differences, and the New York lines contending for equal rates with Baltimore. About a decade later it was agreed that Boston and Portland should have rates the same as New York. The average short-line distances between differential territory and the several ports are 698 miles to Baltimore,
188 750 miles to Philadelphia, 804 miles to New York, and 921 miles to Boston. Between Hampton Roads and its smaller differential territory, the average is 883 miles as compared with 853 miles to New York.

In a series of proceedings extending from 1898 and 1941, most of which are cited in the prior report,[4] the assailed differentials were repeatedly approved.

As explained in the prior report, at pages 693-694, because of the differences in the ocean rates which prevailed at the time the differential adjustment was first adopted, its effect was to place all of the North Atlantic ports on a roughly equal basis with respect to the combined rail and ocean charges between interior points and foreign destinations over routes through each of those ports.

By 1935, however, ocean tramp rates to and from the several ports having been equalized, the charges for each type of ocean service were then roughly equal, conference and nonconference rates having been equalized between 1916 and 1920. See *Maritime Assn., Boston Cham. of Com. v. Ann Arbor R. Co.*, 95 I.C.C. 539, 554. According to the record, ocean rates may vary dependent upon the type of service; nonconference lines may charge lower rates than conference lines; and tramp operators, whose service is generally slower, usually charge substantially less than conference rates. However, all ocean lines in the same type of service generally maintain the same charges. With equalization of the ocean rates, the combined rail-ocean

[4] Others are *Export and Domestic Rates*, 8 I.C.C. 214; *In The Matter of Import Rates*, 24 I.C.C. 78; *Baltimore Chamber of Commerce v. Ann Arbor R. Co.*, 159 I.C.C. 691; *City of Philadelphia v. Baltimore & O.R. Co.*, 231 I.C.C. 21; and *State of New Jersey v. Baltimore & O.R. Co.*, 245 I.C.C. 581 (1941).

charges through the northern tier ports became higher than those through the southern tier ports.

The respondents and New York and Boston port interests[5] contend that their tonnage of the subject[6] has declined and that the higher rail-ocean transportation charges through those ports than through the southern tier ports, which have prevailed since 1935 when equalization of all ocean rates was completed, have been the cause of their inability to compete for this traffic, with consequent diversion of a large share of it from their ports to the lower rated ports south of New York. They claim that this loss in tonnage has been experienced by them particularly since 1946, a period of extensive growth in total United States foreign trade. This growth was, for the most part, in certain bulk commodities, such as coal, petroleum, and iron ore, which tonnage is not here concerned.

The Boston respondents say that their share of the subject traffic "has been almost completely wiped out," that "they are no longer a competitive factor" in its movement; 189
that Boston is no longer able to participate in it to a signicant extent; and that they seek "once more [to] become competitive" for it. These statements imply, as do those of respondents generally, that at some earlier time they had opportunity to compete for this traffic and enjoyed a proportionately greater amount of it than they did in 1955-56. Such a time presumably was prior to 1935,[7] before the establishment of ocean rate parity, which they say was the circumstance that disrupted the equality of the rail-ocean charges through the several North Atlantic ports and thus placed the respondents and their ports in a disadvantageous position.

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[5] Albany's tonnage, except for export grain, was negligible.

[6] The total volume, about 11 million tons, of this traffic, as shown in appendix F to the prior report, was about 7 percent of all foreign commerce through the North Atlantic ports in 1955.

[7] This year will be used for purposes of discussion, although the ocean rates of most importance here apparently were equalized by 1920.

The evidence as to the tonnage which moved on the subject rates is limited to the years 1946 or 1947 and 1951, and to the traffic test period or composite year from August 1, 1955, to July 31, 1956. Except for the composite year, the data are incomplete or not on comparable bases. As to traffic through New York, the data include only tonnage handled by four of the respondent railroads which serve that port and do not include that handled by the Baltimore & Ohio, the Pennsylvania, or the Central Railroad of New Jersey, which also serve the port. As to Boston, the New Haven produced no data except for the composite year. The data for the Boston & Maine at that port and Portland are for that year and 1951 only. Albany's tonnage is shown only for the composite year. The figures for the test period, shown in appendix F to the prior report, are the only complete tonnage data of record for the subject traffic. As no corresponding data were presented for any period prior to the equalization of ocean rates, when the respondents presumably were in a position to compete, ratewise, for the subject traffic unhampered by a disparity in through charges, the record affords no basis for determining the relative participation of the opposing railroads and ports in this traffic before and after such equalization. Thus, it lacks evidence necessary to test the validity of the claimed loss of such traffic and to show that such loss was due to disruption of the parity of the rail-ocean charges.

The respondents say that the general tonnage data compiled annually by the Department of the Army, Corps of Engineers, were "one of the basic alarms" which prompted the proposed equalization. Such data reflect all tonnage handled through the North Atlantic ports, rather than rail carriage of the subject traffic to and from the affected territory only. The tonnage data presented by the port interests are, for the most part, even more general in character and are similar to those summarized in appendixes B and D to the prior report.

190 Analyses of these overall tonnage data for years since 1922, as shown in appendix D and the carload exports as shown in appendix B since 1938, which afford the only

indication of the relative participation of the several ports in the total North Atlantic trade for significant periods, were discussed on pages 700 to 707 of the prior report. Most of the increase in traffic which contributed to a greater increase in such trade through southern tier ports than through northern tier ports consisted of the bulk commodities mentioned above. As appendix C shows, excluding those commodities and grain, the percentages of the remainder of the total foreign tonnage shared by the northern tier ports and the southern tier ports were only slightly different in 1955 than in 1946, and, as indicated in the lower half of appendix C, the trends of the movements of such tonnage from 1946 to 1955 for Boston and New York compare favorably with those of the southern tier ports. Export coal, except for some movement through New York, presently minimal, moved and continues to move almost exclusively through the southern tier ports; so also, most of the North Atlantic grain exports, particularly since World War II, have moved through the southern tier ports.

From 1946 to 1955 as to exports, exclusive of coal and grain, the small decline through southern tier ports was slightly more than that through the northern tier ports. A comparison with 1939, however, in appendix B, shows that the major ports have experienced a substantial increase in such exports.

The respondents and the New York and Boston port interests contend that a parity of rates to and from the ports and equalized through charges are a competitive necessity. Boston emphasizes the small volume of the subject-traffic general cargo moving through its port. In view of the preponderance of such traffic, aggregating 2.8 million tons as shown in appendix F, which moved through New York at rates the same as those of Boston, the validity of this contention is not established.

Boston argues that, as a practical matter, its railroads are excluded from competing for the subject traffic, and that with rate parity they would be able to compete effectively for it. It points to the movement of export wheat

to Hampton Roads and Baltimore under a parity of rates as an example of the effectiveness of parity in securing traffic for Hampton Roads. This and other grain movements under the subject rates in the composite year are shown in the following table:

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Commodity	Port differential[1]	To—	Tons	Percent[2]
Wheat	1.5	Hampton Roads	819,609	36.8
Do	1.5	Baltimore	800,237	36.0
Do	.5	Albany	58,850	2.6
Do	.5	Philadelphia	488,310	21.9
Do		Boston	281,968	12.6
Do		New York	117,786	5.3
Do		Portland	35,405	1.6
Corn	1.5	Hampton Roads	None	
Do	1.5	Baltimore	1,243,846	81.7
Do	.5	Philadelphia	211,548	13.9
Barley and rye	1.5	Baltimore	176,774	91.0
Do	1.5	Hampton Roads	None	

[1] Under rates to Boston, New York, and Portland.
[2] Of total subject exports of same commodity through New York and southern tier ports.

It is obvious from this evidence that factors other than rate parity control or strongly affect the grain movement, as is indicated by the heavy movement of corn, barley, and rye to Baltimore and none to Hampton Roads; by the substantial tonnage of corn to Philadelphia at rates higher than to either port south of it; by the much larger movement of wheat to Boston than to New York or Portland, despite equality of rates; and by the much smaller movement of wheat to Albany than to Boston or Philadelphia even though Albany has the advantage of shorter distances and a lower rate than Boston and a parity of rates with Philadelphia.

The record shows that during 1955 and 1956, imports, including a variety of manufactured articles, arrived at the port of New York destined to Baltimore and Philadelphia. These were forwarded over protestant railroads, 738 carloads to Baltimore and 759 carloads to Philadelphia. Similarly, in those years, 1,722 carloads of commodities originating at Philadelphia and 863 carloads at Baltimore were forwarded over their lines to New York for export. These movements totaled 4,082 carloads and 122,067 tons. Another example of the attraction of New York for export traffic is

the preponderance of New England's exports and imports which move through New York, as indicated in the prior report. This movement aggregated about 7,000 carloads in the composite years, and some of it moved from and to points nearer to Boston to New York.

Witnesses for the respondents and their supporting shipper interests testified that the differentials are not all controlling in the movement of this traffic, that the choice of ports is influenced by many other factors, and that it is impossible to determine the channeling effect of the differentials in such movement. Thus, witness for the New England Industrial League testified that its manufacturers "pay the higher rail costs involved in using a port other than Boston in return for ocean time advantages." The wide variety of imports and exports which move on the subject rates through New York, exclusively or almost so, 192
even though its rates are the same as those from or to Boston and higher than those from or to the southern tier ports, also evidence the influence of factors far more powerful than the differentials.

A Boston witness testified that in order to balance the relatively light-weight, small-lot shipments which New England manufacturers produce, it needs bulk and bottom cargoes, such as heavy machinery, cars, and trucks. The record shows that the movement of these articles to New York by protestants alone is far greater than to Baltimore or any other southern tier port. The following table shows the proportions of the exports of such subject traffic which moved to those ports in the composite year, expressed as a percentage of the total movement through New York and the southern tier ports:

Commodity	New York	Baltimore
	Percent	*Percent*
Automobiles and auto trucks, n.o.s.[1]	94.0	2.6
Agricultural implements, n.o.s.	92.9	1.0
Automobiles, passenger	90.7	8.8
Machinery and machines, n.o.s.	81.9	8.5
Vehicles, motor, n.o.s.	86.0	7.2

[1] Not otherwise specified.

In the prior report we referred to the preponderance of superior steamship and port services at New York, and we concluded that these, among other things, were the chief reasons why that port was in a position to attract the large volume of traffic which it did, not withstanding that its rates were higher than those of the southern tier ports and Albany.

Boston's position is that, with respect to port services and facilities, it is fully competitive with the southern tier ports. It makes almost no mention of the extensive steamship and port services at New York. As to steamship services, its sailings are said to be adequate to accommodate its present traffic. It urges that the sailings would rapidly increase and be fully competitive if available tonnage were increased, and suggests that the lack of bulk cargo is the cause of the light movement of general cargo through its ports. As grain affords one of the principal bulk cargo exports, the following table based on the composite year, shows that both New York and the southern tier ports experienced no difficulty in this regard:

Port	Grain exports	Other exports
	Tons	*Tons*
Boston	358,516	3,256
Philadelphia	705,578	149,231
Hampton Roads	859,191	189,826
New York	203,994	2,189,051

193 The location of the New Haven's lines, which do not extend westward from New York, handicaps it in competing with other railroads for the subject traffic to and from that port. This was shown by the volume of such traffic handled by it in the composite year, consisting of 16 carloads of imports and 26 carloads of exports from and to New York, as compared with 4,121 carloads of imports and 2,785 carloads of exports which it moved through New York from and to nonaffected territory. Through Boston it handled subject traffic consisting 320 carloads of imports and 68 carloads of exports, contrasted with 2,084 and 1,867 carloads, respectively, of other imports and exports principally to and from New England.

The Boston & Maine apparently has little participation in the subject traffic, except grain, of which it handled 3,235 carloads to Boston, as compared with 91 carloads to Portland, in the composite year. Of imports to differential territory, it handled 226 carloads from Boston and 164 from Portland.

Additional evidence of record relating more particularly to the individual North Atlantic ports will now be discussed.

Albany. — Following the eastern class-rate revision, effective December 3, 1931, the export-import rates to and from North Atlantic ports other than Albany were readjusted. After several attempts the railroads failed to agree upon properly related rates for Albany. In *Albany Port District Comm. v. Ahnapee & W. Ry. Co.*, 219 I.C.C. 151 (1936), hereinafter sometimes called the *Albany* case, that port assailed its rates as unreasonable and unduly prejudicial to it and unduly preferential of other North Atlantic ports. We found those rates unreasonable to the extent that they exceeded those on like traffic to and from Philadelphia, and unduly prejudicial and preferential to the extent that they bore a relation to the Baltimore, Philadelphia, and New York rates less favorable than the rates on the maximum bases prescribed.

Albany is 143 miles north of New York, and is served by the New York Central and the Delaware & Hudson. The similarity of the average distances between key points in differential territory and Albany of 737 miles, and Philadelphia, 746 miles, was an important consideration in prescribing the described port relationship. Albany's position herein is that the relief afforded it in the case last cited was inadequate as to the subject traffic, and that if the North Atlantic port rates are equalized, as sought by the respondents, its rates should be no higher than those to and from Baltimore and Norfolk.

The evidence upon which it relies, other than with respect to its port facilities, is mainly that presented by respondents herein. Total exports of grain moved through that port

increased from 94,875 tons in 1923 to 844,827 tons in 1955, while Philadelphia's exports in those years were 16,641 and 712,767 tons. Since 1946 it obtained, on the average, annually about 15 percent of the grain exports through North Atlantic ports. Of the subject grain traffic, as shown in appendix F, it obtained 141,000 tons or 3 percent of such traffic to all the ports, as compared with 4.4 percent for New York, 7.7 percent for Boston, and 15 percent for Philadelphia.

Except for export grain, Albany's participation in this traffic is insignificant. Philadelphia, with the same rates, obtained 6.6 percent of the imports and 10.6 percent of the exports, and New York, with higher rates, obtained 23.1 percent of the imports and 29.3 percent of the exports. Thus, as to both exports and imports, it is apparent that factors other than the differentials strongly influenced the movements.

As we observed on page 172 of the report in the *Albany* case, the basic port rate structure was formed by the voluntary joint action of the railroads serving the several ports and their connections, and depends for its very existence upon the participation of every such carrier. Upon a comprehensive record, we there concluded that rates on port traffic between Albany and differential territory "in comparison with the port rate structure applying to and from the other ports" were unlawful as above indicated, and lawful port relations were prescribed, which are still in effect. The evidence presented in support of the Albany rates proposed herein, which would modify the present relationships, not only of Albany to the other northern tier ports, but also to Philadelphia and the other southern tier ports, is inadequate to support findings that the relationships required in the *Albany* case are in any respect unlawful under present conditions.

New York. — The rates to and from New York have been considered as the basic rates in this adjustment. Under those rates and other conditions favorable to it, the port, over many years, has developed its foreign commerce, including that considered herein, and has maintained its

position as the nation's chief port. This is clearly portrayed by the facts previously discussed herein and in the prior report.

It is noteworthy that, since equalization of the ocean rates, the only complaint of any northern tier port in which the differential adjustment on export and import traffic generally has been assailed was filed by Boston in 1922. *Maritime Assn., Boston Cham. of Com. v. Ann Arbor R. Co., supra.* It there contended that the equalization of ocean rates pursuant to the policy of the United States Shipping Board, and the decline in Boston's commerce constituted material changes in circumstances and conditions which warranted revision of the port adjustment. Its need for bulk cargo and the decline in grain and flour exports from 195
the West, upon which it had largely relied for such cargo, were also stressed. In that proceeding New York opposed lower rates for Boston than for New York. In dismissing the complaints the Commission, at page 567 said:

> The port differentials are arbitrary. * * * It may be conceded that they "are the result of compromise, arbitration, and agreement resorted to as the only means so far found of averting rate wars." They do not accurately reflect transportation conditions, first, because they are uniform, and second, because the lesser distances from differential territory to Philadelphia and Baltimore as compared with New York and Boston are reflected only in part.
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> * * * * * *
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> In the present proceeding there is no evidence that the rates under attack are either unreasonably high or unreasonably low. The real issue is whether undue preference and prejudice exist. In view of the very substantial advantages in distance from differential territory which Philadelphia and Baltimore enjoy, as compared with New York and Boston, * * * we are unable to find that there is anything unlawful about the port differentials in favor of Philadelphia and Baltimore. Compared with the advantages in distance, the present differentials in many cases are relatively small.

As we said in the prior report in summing up the evidence intended to show loss of the subject traffic after equalization of the ocean rates, such evidence fails to disclose that the parity in rail-ocean charges has diverted this traffic from the northern tier ports. On the contrary, it shows that New York alone attracts the greater part of the subject general-cargo traffic, and that the movement to and from the ports of the bulk cargo commodities, chiefly grain and bulk ores other than iron ore, is affected by numerous factors other than the differentials. Especially is this true of export grain. There are many circumstances peculiar to the movement of these commodities, as disclosed in our reports in *Export Grain from Buffalo to New York*, 278 I.C.C. 31, 292 I.C.C. 647; *Iron Ore from Eastern Ports to C.F.A. Points*, 291 I.C.C. 527, 299 I.C.C. 195, and 300 I.C.C. 102; *Coal, Clearfield Group to Philadelphia for Export*, 308 I.C.C. 425. Findings as to rates on such commodities are not decisive of issues concerning the lawfulness of existing relationships in the general body of rates on this port traffic.

The great variety and volume of the subject traffic which flows through New York under the circumstances disclosed of record emphasizes the strong attractions which induce shippers to use this port. Numerous commodities move entirely or preponderantly through the port, shippers preferring it not only to Boston and Portland, which have the same rates, but to Albany and the southern tier ports which have lower rates. The relative advantages which the port offers, such as superior steamship service and sailings, and its extensive port services, are important considerations along with the rail-ocean charges themselves.

196 *Boston.* — The Boston respondents and port interests supporting them contend that their rate disadvantage of 2 cents or 3 cents (0.5 cent or 1.5 cents on grain), as compared with Philadelphia and Baltimore, makes it impossible for them to compete to a significant extent with the southern tier ports. As previously discussed and as shown in appendix F, except for export grain, a relatively small volume of the subject traffic moves through Boston. Even less moves through Portland and Albany, despite import rates from the

former over differential routes through Canada the same as from Baltimore, and lower rates from and to Albany than from and to Boston. As portrayed in appendix F, New York was able to attract 2.8 million tons of general cargo, a volume larger than all of the other North Atlantic ports combined, while Boston, with the same rates as New York, obtained only 21,000 tons of such traffic. These and other comparative traffic data, as previously discussed herein, furnish impressive evidence that factors other than the claimed rate disadvantage with southern tier ports are the chief, if not the only, cause of Boston's failure to secure more of such traffic.

The Advisory Council to the Port of Boston Commission, in reports to the Governor of Massachusetts in December 1957, expressed deep concern as to the lower productivity and much higher labor costs incident to discharging and loading vessels at Boston as compared with New York, Baltimore, and Philadelphia. It cited stevedoring costs per long ton of $3.67 at the latter two ports, contrasted with $5.33 at Boston. Boston argues that the make-work practices causing these high costs have no effect on port competitive costs, as any additional costs are borne by the steamship companies. It calls attention also to the council's view, expressed in the second of its reports, that the practices would disappear if a more regular and increased volume of port traffic were made available.

Speaking of the subject traffic generally, a traffic officer of one of the principal respondents testified that it is impossible to determine the channeling effect of the differentials. As to export grain, of which Boston received 2.5 times as much as Albany although the rates to Albany are lower, the Boston respondents concede, and the record shows, that there are a number of factors other than the differential which influence movements to the ports.

As previously indicated, the average short-line distance to Boston exceeds that to Baltimore by 223 miles, and to New York by 117 miles. In formulating port rate adjustments, the railroads have, to a considerable degree, subordinated relative distances to other factors. However, in proceedings

which involved the North Atlantic port adjustment since the 1935 amendment to section 3(1) of the act making that
197 paragraph applicable to ports and port districts, it is significant that relative distances were uniformly accorded substantial weight. *Albany Port District Comm. v. Ahnapee & W. Ry. Co., supra; City of Philadelphia v. Baltimore & O. R. Co.*, 231 I.C.C. 21; *State of New Jersey v. Baltimore & O. R. Co.*, 245 I.C.C. 581, 588. Domestic class rates generally reflect differences in distance and service. Including increases authorized in Ex Parte No. 196, the class rates from Chicago, for example, for classes 20 to 100, are from 10 to 48 cents higher to Boston than to Baltimore, and from 6 to 30 cents higher than to New York.

Albany's rates now reflect, to some degree, its shorter distances from the differential territory than to Boston and New York. From Chicago, for example, the distance to Albany is 184 miles less than to Boston, to which it is intermediate. Boston's rates, as proposed, would be lower than the present rates to and from Albany, and also lower than the present rates to and from New York and Philadelphia. Rates lower to or from Boston than to or from the other ports just mentioned, over some routes, would be in violation of the long-and-short-haul provisions of section 4 of the Interstate Commerce Act.

In an early case in which we dealt with the port rate adjustment to and from these ports, we indicated that Boston's rates should not be lower than those to and from New York. *Chamber of Commerce of N.Y. v. N.Y.C. & H.R. Co.*, 24 I.C.C. 55, 77, 24 I.C.C. 674. Consistently in subsequently proceedings where the issue was presented, the same conclusions were reached. *In the Matter of Import Rates*, 24 I.C.C. 78; *Maritime Assn., Boston Cham. of Com. v. Ann Arbor R. Co., supra.* Significantly, none of the substantial general increases in rates authorized since the latter decision in 1925 has been reflected in these differentials.

Portland. — Except from points in the northern part of the affected territory, such as Detroit, Mich., and points in

northern Michigan, the short-line distances to Portland generally exceed those to any other North Atlantic port in the United States. While Portland has export rates from that territory the same as to New York and Boston, and import rates on certain commodities on the Baltimore level over routes through Canada, nevertheless, except for the small volume of imports through Albany, the volume of both exports and imports which it handled on the subject rates was the smallest of any of the North Atlantic ports. However, the total foreign commerce of the port in 1955 was 10.9 million tons (of which 10.6 million tons were petroleum), as compared with 6 million tons in 1946.

No evidence was presented by any Portland port interest in support of respondents' proposal. As stated in the prior report, this is the only port served by the Maine Central, and, for reasons therein stated, it opposed the respondents' proposed import rates. It was supported in this position 198
by the Maine Port Authority and by commercial and industrial interests of the State of Maine.

GENERAL DISCUSSION AND CONCLUSIONS

For over 20 years following the above-mentioned amendment to section 3(1) of the act, no North Atlantic port, except Philadelphia, has complained of any unlawfulness in the general adjustment of these port rates. Prior to that amendment, no northern tier port served by the respondents had complained since Boston, in 1922, assailed its rates in the proceeding above cited. New York commercial interests intervened in that proceeding and asked that the New York-Boston rate relationship be not disturbed.

The facts in support of the case for Boston as here presented are very similar to those relied upon to support that complaint. It is recognized by Boston that average distances to that port and New York are greater than to Baltimore, but it argues that competitive needs of the carriers justify a departure from distance-based rates. As above indicated, the present rates reflect substantial deviation from relative distances. Such departures from the

transportation standard are characteristic of many port rate structures, the parity of rates being maintained generally by common consent of the carriers and the ports concerned.

The situation before us here differs. While in the instant proceeding there is strong insistence by the respondents and the ports supporting them upon rate parity, equally strong are the claims of their opponents, fully substantiated of record, as to the opponents' geographical, transportation, and cost advantages. In general, in the rare instances where rate changes in port relationships have been required by us, distance has been an important consideration. The *Albany* case, *supra; Nueces County Nav. District No. 1 v. Abilene & S. Ry. Co.*, 291 I.C.C. 459, and cases therein cited. Here, as stated, the distance disadvantages of Boston, for example, are 223 miles over Baltimore, 171 miles over Philadelphia, and 117 miles over New York; and the latter port is 106 miles more distant than Baltimore. Such great differences in distance, under the circumstances here revealed, may not be ignored without running counter to the provisions of section 3(1) of the act. What has just been said applies also, in greater or less degree, to each of the other northern tier ports.

Moreover, for the reasons previously discussed, the evidence is persuasive that, so far as New York is concerned, rate equalization is not required to enable that port to meet the competition of the southern tier ports, and that, so far as Boston, Portland, and Albany are concerned, such equalization would not materially affect the flow of foreign traffic through any of those ports.

199 We are equally persuaded that approval of rate equalization, or of rates to or from any northern tier port which would effect a closer relationship than now exists with the southern tier ports, would result in undue prejudice to the latter ports and in undue preference of northern tier ports.

Upon reconsideration, we find that the proposed rates to and from Albany, New York, Boston, and Portland, separately and collectively, are not shown to be reasonably related to the present rates on like traffic to and from the

southern tier ports, and would cause undue preference of and advantage to the named ports and undue prejudice and disadvantage to the southern tier ports. In other respects, the prior findings are affirmed.

COMMISSIONER FREAS concurs in the result.

COMMISSIONER WEBB, whom COMMISSIONER TUCKER joins, dissenting:

My reasons for dissenting in the prior report are equally applicable here and will not be restated here in any great detail.

At several places in the report the present differentials are described as substantially the same as those which have prevailed for 75 years and which have been repeatedly approved by the Commission. These statements are technically correct. The present differentials were not designed, however, to place Boston and other northern tier ports at a competitive disadvantage by reason of the generally greater distances from those ports to the affected interior territory. On the contrary, the present differentials were designed to compensate for generally higher ocean rates to and from the southern tier ports. But, as noted in the report, when the equalization of all ocean rates was achieved in 1935, the combined rail-ocean charges through Boston and the other northern tier ports became generally higher than those through the southern tier ports. All that Boston and the carriers serving its port ask is that the condition of ocean-rail rate parity be restored so that they may once again enjoy an equal opportunity to compete for the export-import traffic involved. Inasmuch as Boston is seeking to restore, rather than to disrupt, the historic policy of rail-ocean rate equalization, the proposed rates, in my opinion, are entitled to a presumption of validity.

There are several inconsistencies in the report worthy of comment. It is said, for example, that Boston's minute share of the traffic is due to "influence of factors far more powerful than the differentials" and that "so far as Boston.

Portland, and Albany are concerned, such equalization would not materially affect the flow of foreign traffic through any of those ports." If these observations are correct, there is obviously no basis for the conclusion that the
200 proposed rates would cause *undue* preference of and advantage to the named ports.

One statement in the report, if my interpretation thereof is correct, seems clearly erroneous. Referring to the distance disavantages of Boston (223 miles over Baltimore, 171 miles over Philadelphia, and 117 miles over New York), the majority concludes:

> Such great differences in distance, under the circumstances here revealed, may not be ignored without running counter to the provisions of section 3(1) of the act.

In the first place, the distance disadvantages of Boston are reflected to only a negligible extent in the present differential. The differential, as previously noted, was originally fixed, not to compensate for any distance disadvantage, but to offset generally higher ocean rates from and to the southern tier ports.

More important, comparable distance disadvantages have been disregarded by the Commission in port cases too numerous to mention. Disregard of distance disadvantages is implicit in every port grouping recognized by the Commission. The Congress was well aware of this fact when it amended section 3(1) in 1935 by adding the words "port, port district, gateway, transit point." Prior thereto, the Supreme Court had held that ports are not localities within the meaning of section 3(1) susceptible of undue preference or prejudice with respect to import and export traffic. *Texas & P. Ry. Co. v. United States*, 289 U.S. 627 (1933).

The Commission was aware that the Congress was aware that distance considerations are subordinate to the goal of maximizing the number of ports available to shippers; preventing the growth of monopoly based on geographical advantages; and insuring a free flow of commerce through

as wide a range of ports as practicable. In *Albany Port District Comm. v. Ahnapee & W. Ry. Co.*, 219 I.C.C. 151, 173, the following quotation appears from the House Committee report recommending passage of the bill to amend section 3(1):

> In recommending that this bill be passed, the committee does so with the idea in mind that by amending section 3 of the Interstate Commerce Act as thus contemplated it will encourage and promote the freedom of movement of export, import, and coastwise commerce through the ports of the country. The committee considers that it is to the interest of the public that such commerce be permitted to move freely through as many available ports as the governing circumstances will reasonably permit, and that no restrictions upon and impediments to the free movement thereof should be imposed that are not clearly shown to be sound or economically justified. The recommendation of the committee that this bill be enacted is intended to afford competing ports a forum in which to complain of rate adjustments which tend to concentrate the movement of the traffic through one port or a limited number of ports and to deprive other ports of an opportunity to handle a part of such traffic. The committee believes that such a diffusion of the traffic which moves through the ports will redound to the benefit of the producer 201
> and consumer in the interior by whom in the last analysis the transportation charges levied both for the transportation thereof and for the use of the facilities at the ports are ultimately borne.

Accordingly, I would reverse the findings in the prior report, approve the proposed reduced rates to the northern tier ports, and grant fourth-section relief.

COMMISSIONER BUSH did not participate.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 5th day of December, A.D. 1960.

INVESTIGATION AND SUSPENSION DOCKET NO. 6615

EQUALIZATION OF RATES AT NORTH ATLANTIC PORTS

FOURTH-SECTION APPLICATION NO. 32204

IMPORT AND EXPORT RATES FROM AND TO NORTH ATLANTIC PORTS

It appearing, That by order dated July 6, 1956, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and of the relief sought in the fourth section application filed therewith, and suspended the operation of the schedules until February 9, 1957, and that their operation has been voluntarily postponed by the respondents until the disposition of these proceedings;

It further appearing, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel the said schedules, on or before January 23, 1961, upon not less than one day's notice to this Commission and to the general public by filing and posting in the manner prescribed under section 6 of the Interstate Commerce Act.

It is further ordered, That fourth-section application No. 32204 be, and it is hereby, denied; and that these proceedings be, and they are hereby, discontinued.

By the Commission.

HAROLD D. McCOY,

Secretary.

(Seal)